CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT
September 6, 2012 – Study Session
Agenda Item No. 1

SUBJECT: Wireless Telecommunications Facilities Ordinance (PA2012-057)
- Code Amendment No. CA2012-004

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PROJECT SUMMARY

An amendment to the Newport Beach Municipal Code ("NBMC") to update regulations regarding wireless telecommunication facilities ("Telecom Facilities"). Regulations currently contained in Chapter 15.70 would be updated and relocated to Title 20 (Planning and Zoning) and Chapter 15.70 would be rescinded in its entirety.

RECOMMENDED ACTION

Direct staff to modify the proposed draft ordinance as recommended in this report and return to the Planning Commission with the proposed amendment to the NBMC.

DISCUSSION

The proposed code amendment is a comprehensive update to the existing Wireless Telecommunications Facilities Ordinance ("Telecom Ordinance"). The amendment is intended to balance the needs of the community and the increasing demand for wireless networks, while mitigating the impact of Telecom Facilities in the community through effective design and screening techniques. The proposed amendment is also intended to reflect current federal and state law, and legal precedent.

This item was introduced to the Planning Commission on July 19, 2012, and was continued at the request of staff after receiving several letters from telecommunications industry representatives and interested parties. The Commission requested that staff meet and confer with the industry representatives or other interested parties. The Commission also requested the item be presented at a future study session. Staff, industry representatives, and interested parties met on July 25, 2012. After review of the correspondence previously received and the meeting on July 25th, staff recommends changes to the draft ordinance and seeks Commission direction.

Comments, Responses and Recommendations

The following discussion summarizes the primary concerns or issues raised by stakeholders and staff's response and recommended action. The proposed draft ordinance as provided in

Attachment PC-1, includes highlights and abbreviated comments consistent with the discussion below.

1. Discretionary Permit Process [Sections 20.49.020 and 20.49.070]

Comment: Industry representatives have requested an administrative process and a limited use of discretionary review. Additionally, comments suggest that applying the discretionary process to facilities proposed within the public right-of-way violates state or case law.

Response and Recommendation: One purpose of the proposed ordinance is to provide a review process and public notice of proposed facilities through the existing land use entitlement process. Staff believes that the discretionary process is appropriate for visible facilities whether on public or private property or within the public right-of-way. Additionally, staff believes the discretionary process is a reasonable exercise of the City's right to control the time, place and manner Telecom Facilities are established within the public right-of-way. To address the concern that the discretionary process is applied too broadly, staff recommends that Class 1 facilities located on both private and public property be administratively approved without providing notice to the public.

2. Legal Nonconforming facilities [Section 20.49.020 (F)]

Comment: Will existing facilities be required to be changed or phased out in the future?

Response and Recommendation: This subsection provides for the maintenance and continuation of existing facilities that were lawfully constructed but would be considered nonconforming because they would not comply with the provisions of the proposed ordinance. These legal nonconforming facilities would not be required to be modified or amortized. Future facilities proposed or the future modification of existing facilities would be required to comply with the adopted Telecom Ordinance. The subsection also provides guidance for pending applications. Staff recommends that this section be clarified to avoid any possible confusion as to what standards apply to previously approved facilities and pending applications.

3. Definitions [Section 20.49.030]

Comment: Definitions are confusing and need to be clarified or modified to be clearer and to be consistent with federal law. Staff received a comment regarding the location of the definitions within the Zoning Code.

Response and Recommendation: Staff believes that the location of the definitions is appropriate given their very specific nature, but recommends that a number of definitions be clarified and/or eliminated to ease ordinance implementation.

4. Technology requirements [Section 20.49.040]

Comment: Comments were received indicating that the use of, "…the most efficient, diminutive and least obtrusive technology…" is inappropriate and could theoretically be used to discriminate among carriers based upon their technology.

Response and Recommendation: The current ordinance in effect provides this policy language; however, the key factor is that a new facility be unobtrusive. The draft ordinance includes language in Section 20.49.010 (B) indicating that the Telecom Ordinance cannot be applied in a manner that as to unreasonably discriminate among providers of functionally equivalent services. Staff recommends that Section 20.49.040 be modified to stress that new facilities be designed to be as unobtrusive as possible.

5. Location Preferences [Section 20.49.050]

Comment: The proposed classification system is confusing and should be clarified.

Response and Recommendation: The draft ordinance would create 5 classes of facilities for the purpose of identifying preferred locations, design standards, and permitting. The 5 proposed classes are: Class 1 (Camouflaged/Screened), Class 2 (Collocation), Class 3 (Visible), Class 4 (Free Standing Structure), and Class 5 (Temporary).

Staff recommends Class 1 facilities be called "Screened/Stealth" as camouflaging a facility may likely be applied to other classes and might cause confusion as to what classification applies. Staff also recommends the elimination of Class 2 (Collocation) as it is a design technique that could also lead to confusion with other classes. Collocation would be encouraged, but it would not need to be a separate antenna classification. Lastly, staff recommends the creation of a new class for facilities proposed within the public right-of-way to establish a separate process to address issues that are unique to locations within the public right-of-way.

6. Location Preferences, Prohibited Locations [Section 20.49.050 (B)]

Comment: Industry representatives indicate a need to access all zones including residential areas.

Response and Recommendation: The current ordinance does not allow Telecom Facilities to be installed on residential lots (including residential portions of Planned Communities or Specific Plans) or in passive open space zones except under very limited circumstances. Common area or non-residential lots within residential zones, multi-family buildings, and collocated installations on existing utility towers in utility easements within passive open space zones are the only exceptions and they currently require City Council approval. The proposed ordinance: 1) maintains nearly the same prohibited locations; 2) it provides for Planning Commission review at public hearings for exceptions to location standards making access to multi-family areas easier; and 3) it provides access to low-density residential

areas within the public right-of-way. Staff does not recommend any changes to the draft ordinance.

7. Location Preferences, Installations in the Public Right-of-Way [Section 20.49.050 (C)]

Comment: Industry representatives contend that this section includes unreasonable limitations on their use of the public right-of-way. They also contend that underground vaults for support equipment are infeasible and prone to outages during rain events.

Response and Recommendation: The draft ordinance requires compliance with Title 13 (Streets and Highways) and proposed facilities must also comply with Chapter 15.32 (Undergrounding Utilities) of the Municipal Code. The City controls the time, place and manner in which the public right-of-way is accessed. Antennas can be installed on existing vertical poles (i.e. streetlights, traffic signals, or other similar structures); however, new poles within undergrounding districts may not permissible pursuant to provisions of Title 13 and Chapter 15.32 of the Municipal Code. Support equipment, with the exception of pedestal meters, may be required to be located underground in areas where existing utilities are underground and Title 13 also requires new support equipment to be placed in underground vaults whenever feasible. Staff believes that the existing provisions of Title 13 and Chapter 15.32 are consistent with State law and recommends modifying the draft ordinance to eliminate redundant and potentially conflicting provisions.

8. General Development and Design Standards [Section 20.49.060]

Comment: Industry representatives indicate that this section is burdensome and is unfair treatment of Telecom Facilities (i.e. Edison is not held to the same standard).

Response and Recommendation: The emphasis on making Telecom Facilities as inconspicuous as possible is a requirement of the Telecom Ordinance currently in effect. Telecom providers are not public utilities, and therefore, the City can apply development standards and a review process to ensure that new facilities are appropriately located and designed to be screened or otherwise inconspicuous. Staff does not recommend any changes to the draft ordinance.

9. Height [Section 20.49.060 (C)]

Comment: The telecom industry almost universally wants taller facilities to provide clearance from nearby structures and to provide wider coverage to meet the demands of their customers who visit or reside in the City. They also do not want to be subject to a Variance process if there is a need for a facility taller than allowed.

Response and Recommendation: The ordinance currently in effect allows Telecom Facilities on private property to be no taller than the upper height limit (e.g. 35 feet in the 26/35-foot height limitation zone). The City Council can authorize an additional 15 feet and without a

public hearing. The current code does not allow taller facilities as there is no Variance process.

The proposed draft ordinance would change the height requirements stated above by allowing Telecom Facilities to be 5 feet above the base height limit (e.g. 26 feet in the 26/35-foot height limitation zone + 5 feet = 31 feet). This standard treats Telecom Facilities similar to how sloped roofs, elevator shafts, and screened rooftop mechanical equipment are allowed to exceed the based height limit. Discretionary review would be required for a proposal above this standard up to the upper height limit (e.g. 35-feet in the 26/35-foot height limitation zone). A Variance, with no limitation on height, would be required for facilities to exceed the upper height limit. Staff recommends several modifications to this section to provide additional clarity, but no change to the proposed standard or process requirements

Telecom Facilities within the public right-of-way on streetlights or other structures are limited to 35 feet and antennas proposed on existing power transmission lines that are taller than 35 feet cannot be taller than the existing pole. Again, the City Council has the ability to authorize requests up to 15 additional feet. The draft ordinance does not propose to change these provisions.

10. Setback Standards [Section 20.49.060 (D)]

Comment: Industry representatives contend that the proposed "fall zone" setback is unnecessary and restrictive given compliance with building codes.

Response and Recommendation: The proposed draft ordinance includes an additional setback distance of 110% of the facility's height as a "fall zone" setback. Staff believes the additional setback is unnecessary and recommends its elimination. All required minimum zoning setbacks would apply and deviation from setbacks would be processed as a typical Modification Permit or Variance rather.

11. Screening Standards [Section 20.49.060 (F)]

Comment: Comments suggested that this section is too restrictive, partially duplicative of the definitions of antenna classes, and in need of clarification or exceptions to screening requirements when specific requirements are considered infeasible.

Response and Recommendation: This subsection provides standards for screening antennas and support equipment for the 5 proposed antenna classes. Staff recommends that this section be modified to reflect the elimination of the collocation class, creation of the public right-of-way class, and to allow a decision-maker the ability to allow exceptions when specified screening or design requirements are infeasible.

12. Permit Review Procedures [Section 20.49.070]

Comment: Concerns have been raised about burdensome review procedures and one comment questioned the elimination of specific application submittal requirements.

Response and Recommendation: This section establishes the review authority for the various antenna classes based upon location. Staff recommends this section be modified to reflect that Class 1 be administratively considered without public notice and that Class 2 be modified to only address proposed facilities within the public right-of-way. Staff also recommends that most applications be reviewed by the Zoning Administrator (with public hearings) and only those visible, freestanding structures such as monopoles or tower arrays (the most obtrusive designs) be subject to Planning Commission review (with public hearings). Additional clarification for internal consistency with other changes will be necessary. The Zoning Code provides for application submittal requirements to be established by the Community Development Director rather than by ordinance as it provides appropriate flexibility for differing application types. The current submittal requirements identified by the current ordinance will be included in an updated application.

13. License Agreements for City-Owned Property [Section 20.49.090]

Comment: Comments were raised regarding a need to streamline the process and one comment suggests there is a policy to force providers on City property to collect a fee in conflict with state law.

Response and Recommendation: A license agreement for the use of City owned structures or property is required by the current Telecom Ordinance and would remain a requirement with the proposed draft ordinance. Consideration of the license agreement is required to occur after a proposed telecom facility is approved. An applicant is required to pay a lease fee established by the City Council and the current monthly fee is $1,500 per month. The City does not require a franchise fee in violation of State law of a public utility. Staff recommends that this section be revised to allow for concurrent processing of a telecom facility and a license agreement.

14. Modification of existing facilities [Section 20.49.100]

Comment: Concerns were raised suggesting that the proposed provisions relating to the modification of existing Telecom Facilities are too restrictive and confusing. Additionally, industry representatives claim that this section would violate federal regulations and need further clarification.

Response and Recommendation: This section is entirely new and it was drafted in response to 2012 federal regulations that require administrative review of minor changes to existing facilities. Federal law prohibits a state or local government from denying a request to modify an existing facility under particular conditions when the modification does not “substantially change the physical dimensions of a tower or base station.” Federal law does not define

what change is considered "substantial" and industry representatives have indicated that 10% is an appropriate standard. Staff recommends this section be simplified for ease of use and recommends a 5% standard due to the need to review more extensive proposals to ensure that public views are protected and visual impacts are avoided.

15. Radio Frequency (RF) Emissions Reporting [Section 20.49.110]

Comment: Required reports are unnecessary and burdensome given FCC oversight. Staff also received comments regarding an industry concern about the use of RF emissions as a consideration in the review of applications.

Response and Recommendation: Compliance with FCC regulations regarding Radio Frequency (RF) emissions is mandatory and the proposed draft ordinance simply requires operators to demonstrate compliance. Demonstrating compliance should not be considered a burden as it is an industry requirement and staff does not recommend any changes to this section. The City acknowledges that RF emissions are under the jurisdiction of the FCC and considering RF emissions in the course of project review for FCC compliant facilities is precluded by federal law.

Summary

Staff recommends a series of changes to the proposed draft ordinance to reflect comments received to date. The most noteworthy change is to allow administrative review of Class 1 facilities and the elimination of the "fall zone" setback requirement. The remaining changes are intended to provide clarification and simplification. With these changes, staff believes the needs of the industry will be appropriately balanced with the desire to establish appropriate standards and public review.

Next Steps

Based upon Commission direction and public feedback, staff will prepare a revised draft ordinance that will be published well in advance of any future public hearing to allow sufficient time for review by the public, stakeholders, and the Commission.

Prepared by: Submitted by:

James Campbell, Principal Planner

Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

PC 1 Draft Ordinance highlighted for staff recommended changes
PC 2 Comment Letters

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Attachment PC-1

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EXHIBIT "A"

Chapter 20.49 – Wireless Telecommunications Facilities

Sections:

20.49.010 – Purpose and Intent.

A. Purpose. The purpose of this Chapter is to provide for wireless telecommunication facilities ("Telecom Facilities") on public and private property consistent with federal law while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes, protecting scenic, ocean and coastal public views, and otherwise mitigating the impacts of such facilities. More specifically, the regulations contained herein are intended to:

1. Encourage the location of Antennas in non-residential areas.
2. Strongly encourage Collocation at new and existing Antenna sites.
3. Encourage Telecom Facilities to be located in areas where adverse impacts on the community and public views are minimized.

B. The provisions of this Chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This Chapter shall be applied to providers, operators, and maintainers of wireless services regardless of whether authorized by state or federal regulations. This Chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.

20.49.020 – General Provisions.

A. Applicability. These regulations are applicable to all Telecom Facilities providing voice and/or data transmission such as, but not limited to, cell phone, internet and radio relay stations.

B. Permit and/or Agreement Required.

1. Prior to construction of any Telecom Facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), or Limited Term Permit (LTP), depending on the proposed location and Antenna Classes, in accordance with Section 20.49.070 (Permit Review Procedures).

Provide for some administrative approvals

2. Applicants who obtain a MUP, CUP or LTP (and an encroachment permit, if required) for any Telecom Facility approved to be located on any City-owned property or City-held Trust property, shall enter into an agreement prepared and executed by the City Manager or its designee prior to construction of the Facility, consistent with Section 20.49.090 (Agreement for Use of City-owned or City-held Trust Property).

C. Exempt Facilities. The following types of facilities are exempt from the provisions of this Chapter:

1. Amateur radio antennas and receiving satellite dish antennas, and citizen band radio antennas regulated by Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities).
2. Dish and other antennas subject to the FCC Over-the-Air Reception Devices ("OTARD") rule, 47 C.F.R. § 1.4000 that are designed and used to receive video programming signals from (a) direct broadcast satellite services, or (b) television broadcast stations, or (c) for wireless cable service.
3. During an emergency, as defined by Title 2 of the NBMC, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a Telecom Facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause.
4. Facilities exempt from some or all of the provisions of this Chapter by operation of state or federal law to the extent so determined by the City.
5. Systems installed or operated at the direction of the City or its contractor.

D. Other Regulations. Notwithstanding the provisions of this Chapter, all Telecom Facilities within the City shall comply with the following requirements:

1. Rules, regulations, policies, or conditions in any permit, license, or agreement issued by a local, state or federal agency which has jurisdiction over the Telecom Facility.
2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).

E. Regulations not in Conflict or Preempted. All Telecom Facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this Chapter:

1. All applicable City design guidelines and standards.
2. Requirements established by any other provision of the Municipal Code and by any other ordinance and regulation of the City.

F. Legal Nonconforming Facility. Any Telecom Facility that is lawfully constructed, erected, or approved prior to the effective date of this Chapter, or for which the application for a proposed Telecom Facility is deemed complete prior to the effective date of this Chapter, in compliance with all applicable laws, and which Facility does not conform to the requirements of this Chapter shall be accepted and allowed as a legal nonconforming Facility if otherwise approved and constructed. Legal nonconforming Telecom Facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time the application was deemed complete, and any applicable federal and state laws as they may be amended or enacted, and shall at all times comply with any conditions of approval.

Amortizing exiting facilities not required; clarify language

20.49.030 – Definitions.

modify and clarify as necessary to eliminate conflicts, enhance understanding, and utilization

For the purposes of this Chapter, the following definitions shall apply:

Antenna. Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, Antennas, arrays, or other similar devices.

Antenna Array. Antenna Array means Antennas having transmission and/or reception elements extending in more than one direction, and directional Antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and Antenna support, all of which elements are deemed to be part of the Antenna.

Antenna Classes. Antenna Classes are Telecom Facilities and the attendant Support Equipment separated into distinct "antenna classes."

Base Station. Base Station means the electronic equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. Base Station does not include the Antennas and Antenna support structure, or the Support Equipment, nor does it include any portion of DAS.

City-owned or City-held Trust Property. City-owned or City-held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City's jurisdiction, including but is not limited to City Hall, Police and Fire facilities, recreational facilities, parks, libraries, monuments, signs, streetlights and traffic control standards.

Collocation. Collocation means an arrangement whereby multiple Telecom Facilities are installed on the same building or structure.

Distributed Antenna System, DAS. Distributed Antenna System (DAS) means a network of one or more Antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a "hub" or "hotel" where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.

FCC. FCC means the Federal Communications Commission, the federal regulatory agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.

Feasible. Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal and technological factors.

Lattice Tower. Lattice Tower means a freestanding open framework structure used to support Antennas, typically with three or four support legs of open metal crossbeams or crossbars.

Monopole. Monopole means a single free-standing pole or pole-based structure solely used to act as or support a Telecom Antenna or Antenna Arrays.

Operator or Telecom Operator. Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility or facilities within the City.

Public Right-of-Way. Public Right-of-Way or ("PROW") means the improved or unimproved surface of any street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots.

Stealth or Stealth Facility. Stealth or Stealth Facility means a Telecom Facility in which the Antenna, and the Support Equipment, are completely hidden from view in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average observer do not qualify within this definition.

Support Equipment. Support Equipment means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or contribute to the processing of signals from or to the Facility's Antenna or Antennas, including but not limited to cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support Equipment does not include the Base Station, DAS, Antennas or the building or structure to which the Antennas are attached.

Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or Facility. Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or simply Facility or Facilities means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.

Utility Pole. Utility Pole means a single freestanding pole used to support services provided by a public or private utility provider.

Utility Tower. Utility Tower shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.

Wireless Tower. Wireless Tower means any structure built for the sole or primary purpose of supporting Antennas used to provide wireless services authorized by the FCC. A Distributed Antenna System (DAS) installed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission on a water tower, utility tower, street light, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901, is not a Wireless Tower for purposes of this definition. For an example only, a prior-existing light standard which is replaced with a new light standard to permit the addition of Antennas shall not be considered a Wireless Tower, but rather a replacement light standard.

20.49.040 – Available Technology.

All Telecom Facilities approved under this Chapter shall utilize the most efficient, diminutive, and least obtrusive available technology in order to minimize the number of Telecom Facilities in the City and reduce their visual impact on the community and public views.

Reconsider terminology

20.49.050 – Location Preferences.

A. Preferred Locations. The following is the order of preference for the location and installation of Telecom Facilities, from highest priority location and technique to lowest. Antenna Classes are the Telecom Facilities and their attendant accessory/Support Equipment separated into the following distinct Antenna Classes based on observed aesthetic impacts, as follows:

consider "screened/stealth" rather than camouflaged

Class 1 (Camouflaged/Screened): A Telecom Facility with Antennas mounted on an existing or proposed non-residential building or other structure not primarily intended to be an antenna support structure. The Antennas, Base Station, and Support Equipment are fully screened so that they are not visible to the general public. Typical examples include:

- Wall or roof mounted Antennas that are screened behind radio-frequency transparent, visually-opaque screen walls that match or complement existing exterior surfaces of the building or structure to which they are attached.
- Antennas designed to be incorporated within an architectural feature of a building or structure such as a steeple, cross, cupola, sign, monument, clock tower or other architectural element.
- Base Station equipment that is contained within an existing structure, or placed into a new attached structure that matches or complements the existing exterior surfaces of the building or structure

convert Class 2 to address facilities in the public right-of way

Class 2 (Collocation): A Telecom Facility with Antennas and/or Base Stations co-located on an approved existing Telecom Facility and mounted in the same manner with materially the same or improved screening, or the same camouflage design techniques as the approved or existing Telecom Facility. Class 2 Collocation Telecom Facilities also may incorporate flush-to-grade underground Base Station enclosures including flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view.

Class 3 (Visible): A Telecom Facility with Antennas mounted on an existing non-residential building, structure, pole, light standard, Utility Tower, and/or Lattice Tower. The structure is treated with some camouflage design techniques, but the Antenna panels and some portions of the pole, light standards, Utility Tower, or Lattice Tower are still visible. Typical examples include:

- Antennas mounted on the exterior of an existing building so that the panels are visible, but painted to match the color and texture of the building or structure.
- Antennas flush-mounted atop an existing pole or light standard that are unscreened or un-camouflaged, or attached to an existing pole or light standard utilizing a cylindrical Antenna unit that replicates the diameter and color of the pole or standards.
- Antenna panels installed on existing electrical or other Utility Towers, or existing Lattice Towers.

Class 4 (Freestanding Structure): A Facility with Antennas mounted on a new freestanding structure constructed for the sole or primary purpose of supporting the Telecom Facility. The Telecom Facility is designed to replicate a natural feature or is a Monopole or Lattice Tower. The Antennas are either unscreened and visible, or camouflaged/designed to blend in with their surroundings. Typical examples include:

- Antennas mounted inside or behind elements that replicate natural features such as rocks and shrubbery and located in hillsides or other natural areas where the Telecom Facility blends into the surrounding vegetation or topography (e.g. false rocks or shrubbery).
- A Telecom Facility consisting of Antennas mounted on or inside a freestanding structure that uses camouflage to disguise the Antennas (e.g. monotree, flagpole, or other freestanding structure).
- A Telecom Facility consisting of Antennas on the exterior of a freestanding structure that is unscreened/un-camouflaged (e.g. Monopoles or Lattice Tower).

Class 5 (Temporary): A Wireless Tower, Antennas and/or Base Station, and associated Support Equipment system that is a temporary Telecom Facility on a site until a permanent (separately approved) Telecom Facility to provide coverage for the same general area is operational but such placement of a temporary Telecom Facility shall not exceed 1 year, consistent with Section 20.52.040. A Wireless Tower, Antennas and/or Base Station, and associated Support Equipment system that is a temporary Telecom Facility located on a site in connection with a special event, as that term may be defined in Municipal Code Section 11.03.020 (General Provisions), may be allowed only upon approval of a Special Events Permit, as regulated by Chapter 11.03. Class 5 installations include but are not limited to equipment mounted on trailers, trucks, skids, or similar portable platforms.

B. Prohibited Locations. Telecom Facilities are prohibited in the following locations:

1. On properties zoned for single-unit or two-unit residential development, including equivalent PC District designation.
2. On properties zoned for multi-unit residential development and mixed-use development consisting of four (4) dwelling units or less.
3. In the Open Space (OS) zoning district, unless Telecom Facilities are collocated on an existing Utility Tower within a utility easement area, or collocated on an existing Telecom Facility.

no change in policy

C. Installations in the Public Right-of-Way. All Telecom Facilities proposed to be located in the public right-of way shall comply with the provisions of Title 13, and notwithstanding any provisions contained in Title 13 to the contrary, shall be subject to the following:

1. All Support Equipment shall be placed below grade in the public right-of-way where the existing utility services (e.g., telephone, power, cable TV) are located underground. Exception: Any pedestal meter required for the purpose of providing electrical service power for the proposed Telecom Facility may be allowed to be installed above ground in a public right-of-way.
2. Whenever Feasible, new Antennas proposed to be installed in public right-of-way shall be placed on existing or replacement utility structures, light standards, or other existing vertical structures.
3. Any proposed installation in the public right-of-way shall comply with all requirements of the Americans with Disability Act (ADA), and all other laws, rules, and regulations.

Simplify and eliminate any redundant or conflicts with Title 13 with no change in policy

D. Collocation Installations.

1. When Required. To limit the adverse visual effects of and proliferation of individual Telecom Facilities in the City, a new Telecom Facility proposed within one thousand (1,000) feet of an existing Telecom Facility shall be required to collocate on the same building or structure as the existing Telecom Facility. Exception: If the reviewing authority determines, based on compelling evidence submitted by the applicant, that Collocation of one or more new Telecom Facilities within one thousand (1000) feet of an existing Telecom Facility is not Feasible, and all findings required to grant approval of a MUP, CUP or LTP for a Telecom Facility can be met, then such Collocation shall not be required.
2. Condition Requiring Future Collocation. In approving a Telecom Facility, the review authority may impose a condition of approval providing for future Collocation of Telecom Facilities by other carriers at the same site.

20.49.060 – General Development and Design Standards. ← no change other than clarification

A. General Criteria. All Telecom Facilities shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the Telecom Facility as visually inconspicuous as possible. To the greatest extent Feasible, Telecom Facilities shall be designed to minimize the visual impact of the Telecom Facility by means of location, placement, height, screening, landscaping, and camouflage, and shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area. Where an existing structure is replaced to allow for the addition of a Telecom Facility, the replacement structure shall retain as its primary use and purpose that of the prior-existing structure. For an example, where a streetlight standard is replaced with a different streetlight standard to allow for the additional installation of Antennas, the primary use shall remain as a streetlight.

In addition to the other design standards of this Section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP or LTP for a Telecom Facility:

1. Blending. The extent to which the proposed Telecom Facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.
2. Screening. The extent to which the proposed Telecom Facility is concealed, screened or camouflaged by existing or proposed new topography, vegetation, buildings or other structures.
3. Size. The total size of the proposed Telecom Facility, particularly in relation to surrounding and supporting structures.
4. Location. Proposed Telecom Facilities shall be located so as to utilize existing natural or man-made features in the vicinity of the Telecom Facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.

B. Public View Protection. Telecom Facilities involving a site adjacent to an identified public view point or corridor, as identified in General Plan Policy NR 20.3 (Public Views), shall be reviewed to evaluate the potential impact to public views consistent with Section 20.30.100 (Public View Protection).

revise for clarity

C. Height. All Telecom Facilities shall comply with Antenna height restrictions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060.E. (Airport Environs Land Use Plan (AELUP) for John Wayne Airport and Airport Land Use Commission (ALUC) Review Requirements) as may be in force at the time the Telecom Facility is permitted or modified.

1. Maximum Height. Antennas shall be installed at the minimum height possible to provide average service to the Telecom Operator's proposed service area. In any case, no Antenna or other telecom equipment or screening structure shall extend higher than the following maximum height limits:

   a. Telecom Facilities installed on existing streetlight standards, traffic control standards, Utility Poles, Utility Towers or other similar structures within the public right-of-way shall not exceed 35 feet in height above the finished grade.
   b. Telecom Facilities may be installed on existing Utility Poles or Utility Towers that exceed 35 feet above the finished grade where the purposes of the existing Utility Pole or Utility Tower is to carry electricity or provide other wireless data transmission provided that the top of the Antenna does not extend above the top of the Utility Pole or Utility Tower.
   c. Telecom Facilities installed in ground-mounted flagpoles may be installed at a maximum height of 35 feet in nonresidential districts only, and shall not exceed 24 inches in width at the base of the flagpole and also shall not exceed 20 inches in width at the top of the flagpole. As a condition of approval, flagpole sites shall comply with 4 U.S.C. § 1 *et seq.* (the "U.S. Flag Code").
   d. Telecom Facilities may be installed on buildings or other structures to extend up to 5 feet above the base height limit established in Part 2 (Zoning Districts, Allowable Uses, and Zoning District Standards) for the zoning district in which the Telecom Facility is located.
   e. Applications for the installation of Telecom Facilities proposed to be greater than 5 feet above the base height limit may be installed up to the maximum height limit for the zoning district in which the Telecom Facility is located in accordance with Section 20.30.060.C.2 (Height Limit Areas), subject to review and action by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP for a Telecom Facility to exceed the base height limit by more than 5 feet after making all of the required findings in Section 20.49.070.H (Permit Review Procedures).

2. Over-Height Buildings or Structures. Stealth Telecom Facilities may be installed within or on structures that are permitted to exceed the height limit for the zoning district in which the structure is located, either by right under Title 20 or which have received a discretionary approval, so long as the height of the structure is not being increased. The standard of review shall be based on the type of installation and Antenna Classes being used.

D. Setbacks. Proposed Telecom Facilities shall comply with the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located. Setbacks shall be measured from the part of the Telecom Facility closest to the applicable lot line or structure. For ground-mounted Wireless Towers installed on public property or private property, unless the review authority determines a smaller setback would be appropriate based on the surrounding development or uses, the setback

shall be the greater of: a) the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located; or b) 110% of the maximum height of the Wireless Tower including any Antenna or Antenna enclosures attached thereto.

eliminate 110% of height setback

E. Design Techniques. Design techniques shall result in the installation of a Telecom Facility that is in scale with the surrounding area, hides the installation from predominant views from surrounding properties, and prevents the Telecom Facility from visually dominating the surrounding area. Design techniques may include the following:

1. Screening elements to camouflage, disguise, or otherwise hide the Telecom Facility from view from surrounding uses.
2. Painting and/or coloring the Telecom Facility to blend into the predominant visual backdrop.
3. Siting the Telecom Facility to utilize existing features (buildings, topography, vegetation, etc.) to screen, camouflage, or hide the Telecom Facility.
4. Utilizing simulated natural features (trees, rocks, etc.) to screen, camouflage, or hide the Telecom Facility.
5. Providing Telecom Facilities of a size that, as determined by the City, is not visually obtrusive such that any effort to screen the Telecom Facility would create greater visual impacts than the Telecom Facility itself.

clarify entire subsection and allow decision maker flexibility

F. Screening Standards. Following is a non-exclusive list of potential design and screening techniques that should be considered based on the following Antenna Classes:

1. For Class 1 (Camouflaged/Screened) Antenna Installations:
   a. All Telecom Facility components, including all Antenna panels and Support Equipment, shall be fully screened, and mounted either inside the building or structure, or behind the proposed screening elements and not on the exterior face of the building or structure.
   b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
   c. In conditions where the Antennas and Support Equipment are installed within a new freestanding structure, (an architectural feature such as a steeple, religious symbol or tower, cupola, clock tower, sign, etc.), the installation shall blend in the predominant visual backdrop so it appears to be a decorative and attractive architectural feature.

2. For Class 2 (Collocation) Antenna Installations:
   a. A Collocation installation shall use screening methods materially similar to those used on the existing Telecom Facility and shall not diminish the screening of the existing Telecom Facility.
   b. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the Antennas, Base Station, and Support Equipment from public view.

eliminate collocation and modify as necessary to address facilities in public tight-of-way

3. For Class 3 (Visible) Antenna Installations:
   a. Building or structure mounted Antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are mounted and shall be compatible with the architectural texture and materials of the building to which the

Antennas are mounted. No cables and mounting brackets or any other associated equipment or wires shall be visible from above, below or the side of the Antennas.

b. All Antenna components and Support Equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.
c. Antenna installations in the public right-of-way and/or on an existing or replacement streetlight pole or traffic control standard shall be limited to Antennas, Supporting Equipment, and cable components that are compatible in scale and proportion to streetlights and traffic control standards and the poles on which they are mounted. All transmission or amplification equipment such as remote radio units, tower mounted amplifiers and surge suppressors shall be mounted inside the streetlight pole or traffic control standard without increasing the pole width or shall be mounted in a flush-to-grade enclosure adjacent to the base of the pole.
d. Antenna installations on existing or replacement streetlight poles, traffic control standards, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible, and treated with exterior coatings of a color and texture to match the existing pole. If Antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the existing pole.
e. Antennas shall be mounted on existing poles wherever Feasible. If a new pole is proposed to replace the existing pole, the replacement pole shall be consistent with the size, shape, style and design of the existing pole, including any attached light arms.

4. For Class 4 (Freestanding Structure) Antenna Installations:
   a. For a false rock, the proposed screen structure shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A false rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.
   b. The installation of a false tree (such as but without limitation a monopine or monopalm, or false shrubbery) shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. For false trees or shrubbery installations, all Antennas and Antenna supports shall be contained within the canopy of the tree design, and other vegetation comparable to that replicated in the proposed screen structure shall be prevalent in the immediate vicinity of the antenna site, and the addition of new comparable living vegetation may be necessary to enhance the false tree or shrubbery screen structure.
   c. The installation of a new Monopole or Lattice Tower is prohibited unless the applicant by use of compelling evidence can show to the satisfaction of the review authority that higher priority locations or Stealth Facilities are either not available or are not Feasible.

5. For Class 5 (Temporary) Antenna Installations:
   a. A temporary Telecom Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the permitting process reflecting the temporary nature of the Telecom Facility.

6. Support Equipment. All Support Equipment associated with the operation of any Telecom Facility including but not limited to the Base Station shall be placed or mounted in the least visually obtrusive location possible, and shall be screened from view. The following is a non-exclusive list of potential screening techniques that may be utilized based on the type of installation:

    a. Building-Mounted Facilities. For building or structure-mounted Antenna installations, Support Equipment for the Telecom Facility may be located inside the building, in an underground vault, or on the roof of the building that the Telecom Facility is located on, provided that both the equipment and screening materials are painted the color of the building, roof, and/or surroundings. All screening materials for roof-mounted Telecom Facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which it is mounted. If determined necessary by the review authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.

    b. Freestanding Facilities. For freestanding Telecom Facilities installations, not mounted on a building or structure, Support Equipment for the Telecom Facility:

        - Shall be visually screened by locating the Support Equipment in a fully enclosed building or in an underground vault, or
        - Shall be screened in a security enclosure consisting of walls and/or landscaping to effectively screen the Support Equipment at the time of installation. All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings.
        - Screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a “closed-mesh” design (i.e. one-inch gaps) or may consist of an alternate enclosure design approved by the review authority. In general, the screening enclosure shall be made of non-reflective material and painted or camouflaged to blend with surrounding materials and colors.

    c. Installations in a Public Right-of-Way. Support Equipment approved to be located above ground in a public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.

G. Night Lighting. Telecom Facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be required by the U.S. Flag Code. Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties. The review authority shall consult with the Police Department regarding proposed security lighting for Telecom Facilities on a case-by-case basis.

H. Signs and Advertising. No advertising signage or identifying logos shall be displayed on any Telecom Facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the review authority. Signage required by state or federal regulations shall be allowed in its smallest permissible size.

I. Nonconformities. A proposed Telecom Facility shall not create any new or increased nonconformities as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones.

J. Maintenance. The Telecom Operator shall be responsible for maintenance of the Telecom Facility in a manner consistent with the original approval of the Telecom Facility, including but not limited to the following:

1. Any missing, discolored, or damaged camouflage or screening shall be restored to its original permitted condition.
2. All graffiti on any components of the Telecom Facility shall be removed promptly in accordance the Newport Beach Municipal Code.
3. All landscaping required for the Telecom Facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead or dying.
4. All Telecom Facilities shall be kept clean and free of litter.
5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the Facility Operator.
6. If a flagpole is used for a Telecom Facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag shall comply with the provisions of the U.S. Flag Code.

20.49.070 – Permit Review Procedures.

The procedures and requirements for preparation, filing, and processing of a permit application for a Telecom Facility shall be as specified in Chapter 20.50 (Permit Application Filing and Processing) unless otherwise noted below.

A. Permit Required. All applicants for Telecom Facilities shall apply for a MUP, CUP or LTP, from the Community Development Department, depending on the Antenna Class, height, and duration, as specified in the table below:

Table 4-1
Permit Requirements for Telecom Facilities

Antenna Class	Location of Proposed Telecom Facility		
modify to reflect changed classifications, add administrative approvals, and fewer instances where Planning Commission review is require	Located in a Nonresidential District more than 150 feet from a Residential (or Equivalent PC) District or Open Space District or Public Park or Public Facility zoned PR or PF	Located inside or within 150 feet of any Open Space District or Public Park or Public Facility zoned PR or PF	Located inside or within 150 feet of any Residential District or Equivalent PC District
Class 1 Antenna (a) (Camouflaged/Screened)	MUP	MUP	MUP
Class 2 Antenna (a) (b) (Collocation)	MUP	MUP	CUP
Class 3 Antenna (a) (Visible)	MUP	MUP	CUP

Antenna Class	Location of Proposed Telecom Facility		
Class 4 Antenna (a) (c) (Freestanding Structure)	MUP	CUP	CUP
Class 5 Antenna (a) (c) (d) (Temporary)	LTP	LTP	LTP

(a) Any application for a Telecom Facility that proposes to exceed the base height limit of the applicable zoning district in which the Telecom Facility is located by greater than five (5) feet shall require review and action of a CUP by the Planning Commission. Pursuant to this provision, an application that would otherwise be subject to review by the Zoning Administrator would become subject to review by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP, subject to the required findings in Subparagraph H, below.

(b) The review procedure for Collocated Telecom Facilities shall be consistent with the applicable review procedure as identified elsewhere in this table depending on the type of installation and Antenna Class being proposed for the Collocation, unless the Collocated Telecom Facility meets the requirements of California Government Code § 65850.6, or involves the Collocation of new transmission equipment and is consistent with the provisions in Section 20.49.100 (Modification of Existing Telecom Facilities).

(c) Antennas mounted on or within flagpoles, and temporary Telecom Facilities shall not be permitted on properties either used or zoned residentially.

(d) Temporary Telecom Facilities shall be subject to the standard of review for an LTP, pursuant to Section 20.52.040 (Limited Term Permits).

B. Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties. Prior to the submittal for any application for any Telecom Facility located on any City-owned property or City-held trust property, the applicant shall first obtain written authorization from the City Manager or its designee to submit an application.

C. Fee. All costs associated with the permit application review shall be the responsibility of the applicant, including any expense incurred for any outside technical or legal services in connection with the application.

D. Review Process. Review of applications for all Telecom Facilities in City shall be consistent with Chapter 20.50 (Permit Application Filing and Processing), and the FCC Declaratory Ruling FCC 09-99 (“Shot Clock”) deadlines.

E. Review of Collocated Facilities. Notwithstanding any provision of this Chapter to the contrary, pursuant to California Government Code section 65850.6 (as amended or superseded), the addition of a new Telecom Facility to an existing Telecom Facility resulting in the establishment of a Collocated Telecom Facility shall be a permitted use not requiring a discretionary permit provided the underlying Telecom Facility was granted a discretionary permit and was subject to either an environmental impact report, mitigated negative declaration or negative declaration. If such a Collocated Telecom Facility does not satisfy all of the requirements of Government Code section 65850.6, it shall be reviewed pursuant the review procedures contained in Section 20.49.070 (Permit Review Procedures).

F. Emergency Communications Review. At the time an application is submitted to the Community Development Department, a copy of the Plans, Map, and Emission Standards shall be sent to the Chief of the Newport Beach Police Department. The Police Department or its designee shall review the plan’s potential conflict with emergency communications.

The review may include a pre-installation test of the Telecom Facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the Telecom Facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference. .

G. Public Notice and Public Hearing Requirements. An application for a Telecom Facility shall require a public notice, and a public hearing shall be conducted, in compliance with Chapter 20.62 (Public Hearings).

H. Required Findings for Telecom Facilities. The following findings shall apply to all Telecom Facilities:

1. General. The review authority indicated in Table 4-1 may approve or conditionally approve an application for a Telecom Facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following:

a. The proposed Telecom Facility is visually compatible with the surrounding neighborhood.
b. The proposed Telecom Facility complies with the technology, height, location and design standards, as provided for in this Chapter.
c. An alternative site(s) located further from a Residential District, Public Park or Public Facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.
d. An alternative Antenna construction plan that would result in a higher priority Antenna Class category for the proposed Telecom Facility is not available or reasonably Feasible and desirable under the circumstances.

2. Findings to Increase Height. The review authority may approve, or conditionally approve an application for a Telecom Facility which includes a request to exceed the base height limit for the zoning district in which the Telecom Facility is located by more than 5 feet only after making each of the following findings in addition to the required findings above, as well the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):

a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed Telecom Facility and existing adjacent developments or public spaces.
b. Establishment of the Telecom Facility at the requested height is necessary to provide service.

20.49.080 – Permit Implementation, Time Limits, Extensions, and Appeals.

A. The process for implementation or “exercising” of permits issued for a Telecom Facility, time limits, and extensions, shall be in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions).

B. Appeals. Any appeal of the decision of the review authority of an application for a Telecom Facility shall be processed in compliance with Chapter 20.64 (Appeals).

20.49.090 – Agreement for Use of City-Owned or City-Held Trust Property.

When applying for a permit pursuant to this Chapter, all Telecom Facilities located on City-owned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions in the City Council Policy Manual.

Prior to entering into an agreement, the applicant shall obtain a MUP, CUP or LTP. Upon the issuance of a MUP, CUP or LTP, as required, and upon entering into an agreement, the applicant shall obtain any and all other necessary permits, including, encroachment permits for work to be completed in the public right-of-way, building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements.

allow for concurrent processing of facility and license agreement

20.49.100 – Modification of Existing Telecom Facilities.

Notwithstanding any provision in this Chapter of the Zoning Code, a request for a modification of an existing Wireless Tower or Base Station that involves:

a. The Collocation of new transmission equipment;
b. The removal of existing transmission equipment; or
c. The replacement of existing transmission equipment

simplify entire section and maintain 5% threshold

shall be subject to a ministerial review and approval without the processing of a discretionary permit provided that such modification does not substantially change any of the physical dimensions of such Wireless Tower or Base Station from the dimensions approved as part of the original discretionary permit for the Wireless Tower or Base Station.

However, any modification to a Wireless Tower or Base Station which substantially changes the physical dimensions of either the Wireless Tower or Base Station, and any other modification to a Telecom Facility that does not qualify as a Wireless Tower or Base Station, shall be subject to the permits and authorizations required by this Chapter.

"Substantially Change the Physical Dimensions" means any of the following, and refers to a single change, or a series of changes over time (whether made by the same or different entities) viewed against the City approval(s) for the Wireless Tower or Base Station as existing on February 22, 2012, that individually or cumulatively have any of the effects described below:

a. Changing any physical dimension of the Wireless Tower or Base Station in a manner that creates a violation of any safety code adopted by the City, or by the state or federal government.
b. Changing the physical dimension of a Stealth Facility on a Wireless Tower, where the changes would be inconsistent with the design of the Stealth Facility, or make the Wireless Tower more visible.
c. Changing the physical dimension would require work that would intrude upon the public right-of-way, or any environmentally sensitive area.
d. Increasing or decreasing by five percent (5%) or more any of the following:

- The height, width, or depth in any direction of any portion of the Wireless Tower or Base Station; or
- The area required for structures required to support the Wireless Tower, including but not limited to guy wires as approved and constructed through the discretionary permit process

Provided that in no event shall the height is increased to exceed the maximum height permitted in the applicable zoning district under the City's regulations.

e. Increasing by more than five percent (5%) any of the height, width, depth or area encompassed within any structure or object enclosing the Wireless Tower, such as a fence or line of shrubs or bushes.
f. Increasing any of an existing Antenna Array's depth, circumference, or horizontal radius from the Wireless Tower in any direction by more than five percent (5%).
g. Adding more than two Antenna Arrays to an existing Wireless Tower, or adding Antenna Arrays that, if the Antenna Array were an existing Antenna Array, would be of such depth, circumference or radius as to fall outside of item f (above), unless such Antenna Arrays were approved pursuant to Government Code Section 65850.6.
h. The mounting of the new or replacement transmission equipment would involve installing new equipment cabinet(s) not permitted under the initial approval and that will not fit within the existing enclosure for the Wireless Tower or Base Station, or would require installation of a new cabinet or enclosure, excluding new equipment and cabinets that will be installed underground. (Note: the proposed installation of a power back-up system [i.e., gas/diesel generator, fuel cell, battery system, etc.] is not Collocation of new transmission equipment.)
i. Any increase in any physical dimension of a Wireless Tower or Base Station or any equipment related thereto or any enclosure thereof at a Legal Nonconforming Facility.

Each application submitted under this section for a modification to an existing Wireless Tower or Base Station shall be accompanied by:

1. A detailed description of the proposed modifications to the existing Telecom Facility(ies);
2. A photograph or description of the Wireless Tower as originally constructed, if available; a current photograph of the existing Wireless Tower and/or Base Station; and, a graphic depiction of the Wireless Tower and/or Base Station after modification showing all relevant dimensions;
3. A detailed description of all construction that will be performed in connection with the proposed modification; and
4. A written statement signed and stamped by a professional engineer, licensed and qualified in California, attesting that the proposed modifications to be performed will not trigger discretionary review under this section.

Any permit issued will be conditioned, and may be revoked, and the Telecom Facility required to be removed or restored to its pre-modification condition if:

a. Any material statement made with respect to the Telecom Facility is false; or
b. The modifications as actually made would have triggered a discretionary review.

no change

20.49.110 – Operational and Radio Frequency Compliance and Emissions Report.

At all times, the operator shall ensure that its Telecom Facilities shall comply with the most current regulatory, operations standards, and radio frequency emissions standards adopted by

the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.

Within thirty (30) days after installation of a Telecom Facility, a radio frequency (RF) compliance and emissions report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the Telecom Facility is operating at the approved frequency and complies with FCC standards for radio frequency emissions safety as defined in 47 C.F.R. § 1.1307 *et seq*. Such report shall be based on actual field transmission measurements of the Telecom Facility operating at its maximum effective radiated power level, rather than on estimations or computer projections. If the report shows that the Telecom Facility does not comply with the FCC's 'General Population/Uncontrolled Exposure' standard as defined in 47 C.F.R. § 1.1310 Note 2 to Table 1, the Director shall require that use of the Telecom Facility be suspended until a new report has been submitted confirming such compliance.

Upon any proposed increase of at least ten percent (10%) in the effective radiated power or any proposed change in frequency use of the Telecom Facility by the Telecom Operator, the Telecom Operator shall be required to provide an updated certified radio frequency (RF) compliance and RF emissions safety report.

A qualified independent radio frequency engineer, selected and under contract to the City, may be retained to review said certifications for compliance with FCC regulations. All costs associated with the City's review of these certifications shall be the responsibility of the permittee, which shall promptly reimburse City for the cost of the review.

20.49.120 – Right to Review or Revoke Permit.

The reservation of right to review any permit for a Telecom Facility granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

20.49.130 – Removal of Telecom Facilities.

A. Discontinued Use. Any Telecom Operator who intends to abandon or discontinue use of a Telecom Facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The Telecom Operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by the Community Development Director, within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility;
2. Transfer the rights to use the Telecom Facility to another Telecom Operator and the Telecom Operator immediately commences use within a reasonable period of time as determined by the Community Development Director;
3. Remove the Telecom Facility and restore the site.

B. Abandonment. Any Telecom Facility that is not operated for transmission and/or reception for a continuous period of ninety (90) days or whose Telecom Operator did not remove the Telecom Facility in accordance with Subsection A shall be deemed abandoned. Upon a

finding of abandonment, the City shall provide notice to the Telecom Operator last known to use such Facility and, if applicable, the owner of the affected real property, providing thirty days from the date of the notice within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility;
2. Transfer the rights to use the Telecom Facility to another Telecom Operator who has agreed to reactivate the Telecom Facility within 30 days of the transfer;
3. Remove the Telecom Facility and restore the site.

C. Removal by City.

1. The City may remove an abandoned Telecom Facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.
2. If the City removes the Telecom Facility, the City may, but shall not be required to, store the removed Telecom Facility or any part thereof. The owner of the premises upon which the abandoned Telecom Facility was located and all prior operators of the Telecom Facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the telecom permit as reimbursement for such costs. Also, in lieu of storing the removed Telecom Facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

D. City Lien on Property. Until the cost of removal, repair, restoration and storage is paid in full, a lien shall be placed on the abandoned personal property and any real property on which the Telecom Facility was located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder, with the costs of filing, processing, and release of such City Lien being added to the other costs listed in this Section D.

Attachment PC-2

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The Honorable Michael Toerge
Chairman, Planning Commission
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663

Subject: Proposed Amendment to Wireless Telecommunications Facilities Ordinance (PA2012-057), Code Amendment No. 2012-004

Dear Chairman Toerge:

AT&T appreciates the opportunity to provide comments to the Planning Commission on the proposed amendment to the City of Newport Beach's (City) Wireless Telecommunications Facilities Ordinance. AT&T has been providing communications service in Southern California for over a hundred years and its affiliate has been providing wireless telecommunications services since the late 1980's. AT&T is eager to work with the City in its efforts to address concerns about placement of wireless facilities within the City.

AT&T is most concerned about aspects of the proposed amendments that would directly impact the ability of the wireless telecommunications industry to provide service to residents, businesses and visitors in Newport Beach, who rely on cellphones and other wireless devices in their daily lives. As you are no doubt aware, the proposed amendments would affect not only cellphones, but wireless data of all kinds (including audio signals, video signals, computer files, e-mail and data of all kinds that now use wireless transmission) are affected.

Over all, we believe the proposed amendments are overly specific and restrictive and could give rise to a host of future issues and problems that may require further ordinance modifications. For example, by providing unique definitions of terms like "base station" that deviate from specific federal law definitions and is but one component of a wireless facility under 47 U.S.C.A 332, the City risks running afoul of Section 332 protections, creating a prohibition on wireless service, and having the entire ordinance preempted. We recommend that the City instead treat wireless facilities more like other facilities and not regulate them. Below, we provide the applicable law and our specific concerns.

APPLICABLE LAW

The federal Telecommunications Act of 1996, 47 U.S.C.A. 151 et seq. (1996) regulates the deployment of wireless telecommunication service. Section 332(c)(3) gives the FCC certain authority that is exclusive and which preempts conflicting acts by state or local governments. Section 332(c)(3)(7) of the Act, while recognizing that local zoning authority is preserved, requires that local regulation not "unreasonably discriminate among providers of functionally equivalent services" and not "prohibit or have the effect of prohibiting the provision of personal wireless services."

Also recently enacted at the federal level, section 6409(a) of the Middle Class Tax Relief and Job Creation Action of 2012 (47 U.S.C.A. § 1455(a)(2012)) provides that "a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station." An "eligible facilities request" includes any request to modify an existing wireless tower or base station that involves collocation, removal, or replacement of transmission equipment. (Id.)

California state law also impacts placement of communication facilities within the public rights-of-way. Wireless and wireline carriers, as "telephone corporations," have access rights to the public rights-of-way under Section 7901 of the California Public Utilities Code. A telephone corporation enjoys a vested right under Section 7901 to construct "telephone lines" and "necessary fixtures" "along and upon any public road." California courts have long upheld this vested right to enter and use the public right-of-way.

In our view, the City possesses only a limited right to curtail the rights of telephone corporations under Section 7901. Section 7901.1(a) grants to the City only the ability to exercise "reasonable control as to the time, place and manner in which roads . . . are accessed." Section 7901.1(b) provides that any municipal regulations "at a minimum, be applied to all entities in an equivalent manner," thereby imposing a duty on the City to regulate in a non-discriminatory manner.

COMMENTS

As mentioned above, some of the provisions of the proposed amendments might constitute a prohibition of services under the federal Telecommunications Act. A number of the special requirements outlined in the Proposed Ordinance relating to wireless facilities placed in the public rights-of-way also appear to go well beyond the regulation permitted under Section 7901 of the Public Utility Code. Finally, we believe the proposed amendment conflicts with Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012. We identify some of the problematic provisions in more detail below.

Section 20.49.030 – Definitions
Base Station – The definition provided by City for "Base Station" is too restrictive and should not exclude DAS. Alternatively, we request the City's language be modified more broadly to: "A Telecom Facility installed and operated by the Telecom Operator for signal transmission and reception." The second sentence regarding antennas and DAS should be excluded from this definition.

Wireless Tower – Only the first sentence should apply. The remaining part of this definition inappropriately narrows the meaning of a wireless tower.

Section 20.49.040 – Available Technology
We do not believe this section is relevant. It attempts to codify the choice of technology used in sites. Although it does not explicitly state various technologies, it is inappropriate for the City to dictate what technology carriers select. For example, under this section, the City could insist that AT&T use DAS or any other "efficient, diminutive, and least obtrusive available technology" as opposed to a Macro Site.

Section 20.49.050 (B) - Prohibited Locations
We do not believe the City should impose blanket prohibitions on certain locations within the City's Jurisdiction. What if the only available site is in a prohibited location? Carriers should have the

opportunity to at least attempt or work with the City to build a site at any location in the City if that is the only available means.

Section 20.49.060 – General Development and Design Standards (Also in Same Section Subsection (E))
Some of the stealthing standards and guidelines in this section and referenced in other sections may not be feasible, such as using surrounding vegetation and structures to camouflage a site. To the extent that such techniques need only be considered but are not required to be implemented, this section may be workable. However, if the City intends to mandate these guidelines and standards, that is problematic, as natural vegetation and structures can impair or block RF signals.

Section 20.49.060 (C) - Height
There are maximum height standards which may not work from an RF perspective, although we recognize that variances can be granted.

Section 20.49.060 (D) - Setback
The setback requirement for a wireless tower is 110% of the height of the tower including the antennas or enclosures. Newport Beach is a densely populated area and this setback requirement could effectively prohibit new wireless towers as this requirement may be very difficult to meet in many parts of the City.

Section 20.49.100 – Modification of Existing Telecom Facilities
This section appears to be an attempt to codify Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012. Under Section 6409(a) any facility modification that falls under and complies with Section 6409 must be approved by the City. Section 6409 is not discretionary. We do not believe the City should set standards and definitions that restrict or define the applicability of the Federal Statute, as it appears to do in this section. It is appropriate for the City to describe how it will comply, but it should not attempt to redefine the elements of Section 6409.

We hope the City finds these comments to the proposed amendment helpful. We welcome the opportunity to work with the City staff to discuss our legal and practical concerns and to develop solutions amenable to both AT&T and the City.

Sincerely,

Kyla C. Powell

Cc: Bradley Hillgren, Vice Chair, City of Newport Beach Planning Commission
Members, City of Newport Beach Planning Commission
Janet Johnson Brown, Associate Planner

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7/18/12

Janet Johnson Brown
Associate Planner
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663

Dear Ms. Brown,

On behalf of Core Communications, I would like to thank for the opportunity to provide feedback regarding the City's proposed Wireless Communications Facilities Ordinance. I commend planning staff and the City for determining that an updated ordinance is needed to allow for a uniform set of standards that each application will be subject to.

Below are our comments regarding the proposed ordinance amendment. Given our many concerns I feel it would be best if the city would continue this item to a later date to allow for an outreach meeting with the industry. I have found that a dialogue with City staff allows for the industry to understand staff's intent behind each requirement and also allows staff to understand the possible effects certain requirements may have. By understanding the goals and intent of both sides I feel that City staff will develop an ordinance that continues to achieve the City's objectives and protects the wellbeing of all those involved.

The following discussion highlights are an area of a concern:

1. Public Notice/Public Hearing Process and Review Authority, specifically Section 20.49.070(G): It should not necessary for all proposed projects to go through the hearing process. The City should utilize a set of objective design standards and if a carrier meets them, there should be no reason to go before any discretionary body, regardless of location. A streamlined process, such as an administrative approval, is recommended for sites that are co-located, building or roof-mounted, or located on utility infrastructures such as SCE towers. The code should explore incentives for applicants to bring forth quality proposals, such as a simplified review process. The City of Anaheim's code demonstrates this type of review, which has increased the wireless telecommunications coverage in the City and while upholding the quality of installations proposed.
2. Installations in the Public Right-of-Way, specifically Section 20.49.050(C): Requiring a full conditional use permit for all proposals in the public right-of-way seems overly cumbersome. If planning review is determined to be absolutely necessary, I recommended a streamlined administrative process. Public right-of-way sites are typically located on existing structures, such as light poles, therefore the aesthetic impact is minimal. I recommend only requiring specific design standards for these specific sites that the carrier will have to adhere to and if those

design standards are followed the site is approved. If it the site is unable to meet the City's design standards, then at that time the discretionary planning process may be required. For example, the City of Laguna Niguel has design standards that were adopted by the City Council. If a proposal is unable to conform to those standards then it must go through the planning process. Another example is the City of Tustin which only requires public right-of-way sites to go through an administrative design review process. Furthermore, subsection (1) requires all support equipment be placed below grade. As you may or may not be aware the industry tries to stay away from vaults at all costs. Facilities flood due to rains and the required flush-mount vents. When this occurs, sites go "off air", creating a gap in coverage, not to mention the fact that it could cost hundreds of thousands of dollars to repair even one facility. When a site goes "off air" the community will lose needed and required coverage. Additionally, some carriers' facilities often include an emergency generator which requires ventilations and specific clearance requirements that would not be able to be enclosed or vaulted. While it is understood that often Public Right-of-Way installations have very little space for equipment and vaulting may be the only option, there are occasionally circumstances where the equipment can be located above ground while being screened. Therefore, by limiting equipment to be undergrounded only, those occasions are restricted.

3. Design Standards and Criteria, specifically Section 20.49.060: Again, I commend the City for instituting design requirements; however, as stated above should the city institute a set of objective design standards and the carrier meets them, there should be no reason to go before any discretionary body, regardless of location. In this situation the aesthetic impacts are no longer of a concern given the facility meets code. A streamlined process, such as an administrative approval, is recommended for sites that meet the required design standards. Furthermore, the code should explore incentives for applicants to bring forth quality proposals, such as a streamlined review process.
4. Deviation to Height Limitations and Location Requirements, specifically Section 20.49.060(C)(1). Subsection (c) should be revisited as several schools, churches, and other public institutions are often in residentially zoned districts and typically they have flagpoles in front of their establishments. In the event there are no other options to locate antennas and equipment within a steeple, some other portion of the building, or a more appropriate stealth design; prohibiting flagpoles in residential zones may inadvertently cause a prohibition of service. In those cases where the current proposed code would allow a flagpole installation, 35' is an extremely restrictive height. As previously stated, wireless telecommunications antennas require line of site free of obstructions. Given that a great majority of buildings within the City are multiple stories and some areas of the City have topography challenges, 35' will not likely provide the necessary line of site. Therefore, it is recommended that no height limit be specified. The restriction of a 24" diameter pole is also extremely limiting. Often carriers

require at least 30" or more due to different technology and azimuth requirements. Again, it is recommended that a larger diameter measurement be provided or the size is left unspecified. Height may also be an issue in Subsection (d) having adverse implications on roof-mounted installations. The City is a beach community and often buildings are constructed to the maximum height limit. Only allowing five feet above base height limit may not be enough to allow for screening and many carriers' antenna technology. Some carriers have antennas in lengths of up to eight feet. Additionally, five feet may not be enough to meet EME safety standards depending on where on the rooftop the antennas are proposed. Therefore, it is extremely likely that majority of all rooftop installations will be greater than five feet above the base height limit requiring heightened review. This could potentially cause an architecturally integrated rooftop installation to proceed through a longer, more cumbersome process because it cannot meet the narrow five foot height limitation.

5. Setback Requirements, specifically Section 20.49.060(D): Wireless facilities are required to go through building plan check and demonstrate that they are structurally sound, just as any other building in the City would be required. However, no other building in the City is required to provide a "fall zone", yet the proposed wireless code amendment will require a 110% "fall zone" setback for any new ground mounted wireless facility. It is unclear why wireless telecommunications facilities would be held to a different standard. Additionally, as previously stated, wireless telecommunications antennas must have an unobstructed line of site which will often require the antennas to be much taller than the 25' example stated in the staff report. In fact, the average height of concealed ground mounted facilities will likely be around 55', to allow for a 45' centerline of antennas and additional camouflaging above the antennas. Therefore, if a 55' ground-mounted facility were proposed the 110% setback would be 60.5'from all properties lines, which would likely inadvertently prohibit any ground-mounted wireless facilities on the majority of properties within the City.
6. Modification of Existing Telecom Facilities: Given the recent "Tax Relief Act" legislation, I recommend the City handle all modification requests as ministerial permits. Limiting any change to 5% or less, as the current ordinance amendment proposes, may potentially prohibit any maintenance or equipment changes/additions that will increase the efficiency or technology of the facility .
7. Zoning District Land Uses and Permit Requirements: The City should not prohibit a wireless installation in any zone. This opens the possibility of the City prohibiting telecommunications services. Prohibiting an installation outright in any zone may cause the City to unknowingly create a barrier to entry which inadvertently regulates the business affairs of a wireless company. This is likely not the intention of the City and therefore I recommend that the City adopt specific design standards for the residential and open space zones to protect the integrity of the area. Also, many properties may be zoned residential, but are not used for residential

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purposes, which should be taken into consideration. It should be noted that many cities have found having wireless facilities in their parks zoned either residential or open space has created an avenue of revenue for the City.

The entire ordinance is quite lengthy, somewhat burdensome and may provide a barrier for wireless services to be provided to the Newport Beach community. Given the concerns explained in the text above, I feel it would be best if the City would continue this item to a later date to allow for an outreach meeting with the industry. I would like to thank the City for notifying us of this proposed amendment and look forward to working together in crafting a lawful ordinance that protects the residents and businesses of the City of Newport Beach along with operation of the wireless industry.

Yours truly,

Michelle Felten

Michelle Felten
Senior Project Manager

Newport Beach Wireless Ordinance (July 19, 2012 Version)

The following comments are on the version of the Wireless Telecommunications Facilities Ordinance (PA2012-057) / Code Amendment No. 2012-004 presented to the Newport Beach Planning Commission as Agenda Item 5 at its July 19, 2012 meeting.

The comments were prepared by Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229) , and are a mix of what may seem major and minor points.

Disclosure

I live in a blufftop home on a "quiet" street overlooking Irvine Avenue, just north of Santiago Road. I enjoy a view across the Upper Newport Bay Nature Reserve to Saddleback Peak in the distance. The only unnatural object impairing my view is the top of a City-owned streetlight pole in the public right-of-way along Irvine Avenue. In March 2007 the City Planning Department (now Division) approved, without public notice, hearing or right of appeal, an application to attach a pair of highly visible commercial cell antennas to the top of that pole. In November, 2008, without an clear authority from the City Council, the City Manager signed a long-term lease for use of the City-owned pole, and in January, 2009 impacted residents were notified of imminent construction by a contractor (which, to date, has not yet happened). Adding insult to injury, this has been designated as a preferred site for future collocation.

As it turns out the application was approved based on fraudulent information submitted by the applicant including maps which by failing to disclose a major wireless facility two blocks to the north created the appearance of a major "hole" in coverage where none existed. As it also turns out, under the existing telecom code the planner who approved the application should arguably have referred the matter to a noticed public hearing before the City Council because of the proposal's greater-than-normal impact on private views. In addition, the letting of a lease by the City Manager, although consistent with the Council Policy, was, at least in my view, inconsistent with the City Charter, which permits *only* the City Council to bind the City (an action which to comply with the Brown Act would have to take place at a noticed public meeting). Finally, there is an ongoing disagreement as to whether the approval was granted in perpetuity (the Planning Division's interpretation), or if as an unexercised building permit issued subject to the Uniform Building Code it expired (in the absence of any construction) 180 days after issuance (my interpretation).

My neighbors and I expect no relief from the proposed Wireless Telecommunications Facilities Ordinance since it says it does not affect the status of earlier approvals. Nonetheless this example seems to me a paradigm of at least one situation in which a good telecom code would preclude the issuance of a permit: cell equipment should not be sited where it impairs the enjoyment of public or private property unless there is compelling evidence of a serious gap in coverage that cannot be corrected in any less intrusive manner.

Although I appreciate staff's effort in "updating" the code, to the extent the new code would permit the preceding facility to be approved I will find it wanting.

General Comments

The effort to update the City's wireless regulations and integrate them into the Zoning Code is very commendable, particularly to the extent it brings them under the umbrella of uniform hearing and appeal procedures applicable to other zoning/land use decisions.

That said, it seems unfortunate that the City's Media and Communications Committee no longer exists, for this is potentially a major revision that would have seemed deserving of more public outreach and input before reaching so finalized a state. Although I cannot guarantee they would have participated, I personally know of others who have not been entirely happy with the current process.

Where do the revised regulations belong?

The choice of numbering the commercial wireless regulations as "Chapter 20.49" appears to place them in Title 20 (Zoning Code) under Part 4 (Standards for Specific Land Uses). However that part currently contains only a single chapter (Chapter 20.48: Standards for Specific Land Uses), and "Wireless Telecommunications Facilities" would seem logically to be a section under that, much like Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities). The primary reason for not doing so seems to be that the use of a combination of letters and numbers to designate the subsections within a section is more awkward than the decimal scheme of numbering sections within a chapter. Yet a standalone chapter looks out of place when all the other "Specific Land Uses" are sections within a single chapter.

Alternatively the commercial wireless regulations might belong as a separate chapter in Part 3 (Site Planning and Development Standards), much like Chapter 20.36 (Landscaping Standards) or Chapter 20.42 (Sign Standards). Since those chapters are arranged alphabetically, "Wireless Telecommunications Facilities" would be Chapter 20.47.

The proposed transplanting of the section of wireless-specific definitions from Title 15 to Title 20 as Section 20.49.030 (Definitions) is also awkward, for an effort was made to consolidate *all* the definitions in the new Zoning Code in a single section: Chapter 20.70 (Definitions). Although an exception has already been made in Chapter 20.42 (Sign Standards) – which has its own definition section – consideration should perhaps be given to including a dedicated section of wireless definitions in the "W" section of Chapter 20.70, rather than as a separate section within the Wireless code where they are disconnected from the other zoning definitions.

Specific Comments

20.49.010 – Purpose and Intent.

Minor comments:

- Since the regulations of the California Public Utilities Commission also come into play, the phrase in paragraph "**A. Purpose**" that says "*consistent with federal law*" should perhaps say "*consistent with **state and** federal law.*"

- The capitalization of words in the proposed ordinance is not entirely consistent with the style used in the remainder of the current Zoning Code, although the latter itself has many inconsistencies. "State" and "Federal" should perhaps be capitalized. Words like "Antenna" and "Collocation" should perhaps not be, since defined terms are not generally capitalized in most of the rest of the Zoning Code.

Major comment:

- Paragraph "**A. Purpose**" differs from the existing code by a single word, yet despite the claim in Attachment PC2 that there is "*No policy change*," this is in fact a ***major*** policy change. The word "***public***" has been inserted into the phrase "***protecting scenic, ocean and coastal public views***." Although staff has consistently claimed its presence was implied, it was ***not*** there, and the idea that its presence was implied is contradicted by existing Section 15.70.070 (Permit Review Procedures) where:

    1. under paragraph B.4 (Visual Simulations) it says "***Consideration shall be given to views from both public areas and private residences.***" and

    2. under paragraph F.3.b (Special Review by Council) a required finding for approval by the Council is that "***The approved facility will not result in conditions which are materially detrimental to nearby property owners, residents, and businesses, nor to public health or safety***."

    - In addition, Section 15.70.090 reserved to the City the modify or revoke the permit if changed circumstances resulted in "***Additional impairment of the views from surrounding properties.***"

    - Likewise, the issuance of a permit for construction in the public right-or-way under NBMC 13.20.070 (Issuance of a PROW Permit) requires consideration of the adverse aesthetic effects of any above ground facilities.

    - It is clear, then, that an objective of the existing telecom code is the minimization of impacts on private as well as public views – a commitment that is abandoned, to the detriment of the community, in the proposed revision.

20.49.020 – General Provisions.

Minor comment: in the old Section 15.70.020 the lettered sections were arranged alphabetically. It is unclear if the new arrangement has a better logic to it.

- **B. Permit and/or Agreement Required**.

    - This section seems redundant with Sections 20.49.070 and 20.49.090, to which it refers. For example, Section 20.49.070.A. (Permit Required) restates the

requirements, and stating them in two places seems unwise: at best the statements are consistent, at worst they contradict each other.

- **C. Exempt Facilities.**
    - Paragraph 2 seems to refer to a subset of the items that are, or should be, regulated by the code section referred to in paragraph 1.
    - The reference in paragraph 3 seems to be to Chapter 2.20 of the NMBC, rather than to Title 2 in general (most of which doesn't have to do with emergencies).
- **D. Other Regulations.**
    - Does "Notwithstanding" mean the same as "In addition to"?
    - Three numbered clauses in the existing Section 15.70.020.D have been removed. Two of them are probably subsumed in the new "E. Regulations not in Conflict or Preempted," but the reasons for no longer requiring compliance with "3. Easements, covenants, conditions or restrictions on the underlying real property" are less obvious. The City has a reluctance to enforce covenants as expressed in Chapter 20.10.C.1, but that reluctance to check compatibility should not necessarily apply to wireless proposals, where the applicant is rarely the landowner.

20.49.030 – Definitions.

General comments:

- Again, the wireless-related definitions might more logically be placed in the "W" section of Chapter 20.70 (Definitions). The City of Riverside does this nicely in Section 19.910.240 of their Municipal Code where they have a subsection of "W" devoted to "*Wireless telecommunication facilities*" with the header explaining, among other things, "*The following definitions pertain to the regulation of telecommunications uses*." They have also, unlike Newport Beach, inserted their sign-specific definitions in the "S" section with entries such as "*Sign, spandrel*."
- Many rather poor definitions have been copied over from the existing wireless code. Many other ones really could be cleaned up.

Specific comments:

- **Antenna**.
    - This definition is confused and circular, with "antenna" being included as an example of an antenna.
    - It seems, intentionally or not, to include the handheld cell phone at the consumer end of the transaction.

- "Electromagnetic waves" includes light as well as radio- or microwave-frequency emissions, so the definition would seem to include, probably inadvertently, such things as a laser surveying system, or even an ordinary light.

Some examples from other cities:

- "Antenna, Antenna Array, Wireless Antenna Array, or Wireless Telecommunications Antenna Array." One or more rods, poles, panels, discs, or similar devices used for the transmission or reception of radio frequency signals, that may include omni-directional antennas (whip), directional antennas (panel), and parabolic antennas (disc), but excluding any support structure as defined below.
- "Antennas" - Any system of wires, poles, rods, reflecting discs, dishes, flat panels, or similar devices, including "whip antennas", attached to a telecommunications tower, mast or other structure, which in combination with the radio-frequency radiation generating equipment associated with a base station are used for the transmission or reception of electromagnetic waves.
- 1." Antenna" means a device or system of wires, poles, rods, dishes or other devices of similar function, used for the transmission and/or reception of radio frequency signals for wireless communications, as described in the Telecommunications Act of 1996. It may include an omni-directional antenna ("whip"), a directional antenna ("panel") and parabolic antenna ("disc"). It does not include the support structure. 2. "Antenna Array" means a set of one or more antennae.

- **Antenna Array**.
  - This is a particularly inscrutable definition constructed out of inscrutable phrases, especially since our definition of "antenna" includes "arrays." The very concise definition of "Antenna Array" in "2" above seems better.
- **Antenna Classes**
  - As it stands this seems a purely circular definition.
  - A reference to proposed Section 20.49.050.A (where the "classes" are actually defined) would seem helpful.
- **Distributed Antenna System, DAS**.
  - I thought a DAS was a system of small, low-power, closely spaced antenna stations. Does the reference to "third-party" mean it does not qualify as a DAS if it is built and operated solely for the benefit of the installer?
- **Feasible**.

- Should the definition include economic factors?

- **Stealth or Stealth Facility**.
  - False trees have been deleted, probably intentionally.

- **Utility Tower**.
  - It is unclear why a steel pole is regarded as a "tower." Why would the material matter?

- **Wireless Tower**.
  - The intent of the reference to DAS is unclear. In the example, does it matter if the antenna added is DAS or some other kind?

20.49.040 – Available Technology.

- It was unclear under the old code, and remains unclear why this clause is not included in Section 20.49.020 (General Provisions).

20.49.050 – Location Preferences

- **A. Preferred Locations**
  - **Class 2 (Collocation)**
    - It is unclear why the spelling "*co-located*" is used in preference to "*collocated.*"
    - My reading of this definition is that a completely unscreened facility is Class 2 provided the facility to which new features are added was originally unscreened. It is unclear why this would be a preferred over more numerous but less visible installations.
    - Reading further through the code I'm not sure "collocation" should be a "class" at all. In other parts it sounds like it is a construction technique that could be applied to any one of the other classes.
  - **Class 3 (Visible)**
    - "*a cylindrical Antenna unit that replicates the diameter and color of the pole or standards*" sounds like it might be Class 1, certainly if it was incorporated into the normal length of the pole.
  - **Class 4 (Freestanding Structure)**
    - This class seems to encompass a wide range of structures, some of which are much more obtrusive than others.

- **Class 5 (Temporary)**
  - The meaning of "*such placement of a temporary Telecom Facility shall not exceed 1 year, consistent with Section 20.52.040*" is less than clear since Telecom Facilities are not mentioned in Section 20.52.040. Does this mean that even though not mentioned there, the procedures of Section 20.52.040 with a time limit of less than 1 year?

- **C. Installations in the Public Right-of-Way.**
  - "*Any pedestal meter required for the purpose of providing electrical service power*."
    - Has this exception been made obsolete by Southern California Edison's conversion to "SmartMeters" which do not need to be physically read by a technician?
  - "*Any proposed installation in the public right-of-way shall comply with all requirements of the Americans with Disability Act (ADA), and all other laws, rules, and regulations*."
    - Isn't this redundant with the catch-all clauses in Section 20.49.020 (General Provisions, paragraphs D and E)?

- **D. Collocation Installations**
  - In my view this section should be discretionary rather than mandatory. That is, it should say "***may*** *be required to collocate*" rather than "***shall*** *be required to collocate.*" There is no one-size-fits all solution. Ideally the desirability of collocation versus separate installations should be worked out during the public hearing, but the decision has to be made early in the approval process.
  - **Condition Requiring Future Collocation**
    - If the preceding section is mandatory, this seems redundant with it – that is *all* approvals would implicitly include this condition.

20.49.060 – General Development and Design Standards.

- **A. General Criteria**.
  - "*For an example, where a streetlight standard is replaced with a different streetlight standard to allow for the additional installation of Antennas, the primary use shall remain as a streetlight*."
    - It is unclear if this is meant as a definition or a design directive.

- The definition of "Wireless Tower" in Section 20.49.030 implies no size or amount of antennae can ever cause a streetlight to become a wireless tower?
- Does this mean there *is* some threshold at which that would happen, and it is to be avoided?
- If so, should it be elaborated in one of the listed standards? Or is it already implied in "Blending"?

- Apparently this is meant to be read similarly to the explanation of *Screening Standards* in paragraph 20.49.060.F.3.c ("*compatible in scale and proportion to streetlights and traffic control standards and the poles on which they are mounted*") but the tie-in is not immediately obvious to me.

- **B. Public View Protection**.
  - As previously indicated this is a major step back from the present code which protects *both* private *and* public views, and not just from the few (and somewhat arbitrarily located) starred spots on the General Plan map.
  - Although the Zoning Code generally shuns private view protection it is not unprecedented. For example commercial loading docks and roof-mounted equipment are supposed to be screened from view from adjacent residences. And more importantly, the telecom applicant is not normally a landowner restricted to construction on a particular parcel of property

- **C. Height**
  - The reminders about other codes (such as Section 20.30.060.E and 4 U.S.C. § 1) are helpful, but probably redundant with the catch-all applicability of all other codes in Section 20.49.020 (General Provisions).
  - **Maximum Height**.
    - Since the definition of Telecom Facilities in Section 20.49.030 includes the whole shebang (including the antennas, the support structure to which they are attached and even the land on which it sits) the reference to "Telecom Facilities" at the start of each lettered paragraph is at best confusing. I think what is being regulated is the height at which *antennas* (rather than *Telecom Facilities*) can be installed.
    - Lettered paragraph "b" may need some words to clarify how it relates to paragraph "a" – which it is possibly meant to supersede?

- The references to 24 and 20 inches in lettered paragraph “c” are less than clear. They seem to be an attempt to describe the flagpole rather than the “facility,” and I’m not sure how “at the top” is to be interpreted. My recollection is cellphone “flagpoles” frequently have an enlarged cylindrical section near the top (housing the antennas) with a small decorative element above that.

- **Over-Height Buildings or Structures**

  - Stealth Telecom Facilities can evidently be of Class 1, 2 or 4? Exactly how that and “the type of installation“ are to affect the review seems vague.

- **D. Setbacks**

  - The reference to “*installed on public property or private property*” seems unnecessary. What other kinds of property are there?

- **E. Design Techniques**.

  - This subsection may have absorbed the protections of private views in the existing code, but whether it is intended to include consideration of private views or not is unclear.

- **F. Screening Standards**.

  - Class 3:

    - “*No cables and mounting brackets or any other associated equipment or wires shall be visible from above, below or the side of the Antennas*.”

      - This sounds good, but may be unrealistic. I don’t recall ever seeing an installation with visible antenna panels in which the mounting brackets and cables were not at least partially visible.

    - “*Antenna installations on existing or replacement streetlight poles, traffic control standards, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible*..”

      - Large canisters and “radomes” added on top of streetlights and other poles are not necessarily less obtrusive or obnoxious than “exposed” antennas mounted flush to the pole. It is not at all obvious why they would be preferred.

20.49.070 – Permit Review Procedures.

- **A. Permit Required.**
    - "***Table 4-1*** *Permit Requirements for Telecom Facilities*"
        - The index to the existing Zoning Code indicates Title 20 already contains a "***Table 4-1*** *Animal-Keeping Standards*" and a "***Table 4-2*** *Required Setbacks for Structures Housing Domestic Farm Animals*." It would appear that if the proposed code is placed in Part 4 this table will need to be renumbered.
        - Note "a" where it says "*depending on the type of installation and Antenna Class being proposed for the Collocation*" is confusing. I thought a collocated installation was by definition Class 2.
- **B. Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties**.
    - It should be clearly stated that authorization by the written authorization from the City Manager does not guarantee that a lease for use of the property will ultimately be granted by the City Council.
- **H. Required Findings for Telecom Facilities**
    - **1. General.**
        - The term "*review authority*" is used frequently in the proposed code. This seems to be where it is defined. However it is defined by reference to Table 4-1, and that table is less than clear as to who or what the review authority is in most cases.
        - The proposed findings are substantially different from the ones the City Council would currently have to make under Section 15.70.070.F.3.
        - The basic requirement that the facility is needed to provide service seems to be missing. Such a requirement is permitted by case law and needed to prevent an unnecessary proliferation of facilities.
        - The proposed findings seem to preclude placement in parks or on public facilities, since such an application would have to be denied if any other alternative is feasible. Since the City might want the revenue in preference to installation on a nearby private building, the logic behind this is unclear.

20.49.090 – Agreement for Use of City-Owned or City-Held Trust Property

Although outside the scope of the proposed code, I believe, as previously stated, that there is a problem with the procedure of approving the leases formulated by the City Manager and City

Attorney for commercial use of public property as current described in Council Policy L-23 (The Siting of Wireless Telecommunications Equipment on City- Owned Land). The agreement is "approved" by *lack of action* on the part of the City Council, which I believe is inconsistent with both the City Charter and the Brown Act. In addition Policy L-23 will require revision because it currently refers to Chapter 15.70 (which is proposed to be repealed) and to provisions in Title 13 that were never implemented.

20.49.100 – Modification of Existing Telecom Facilities.

- The reference under the definition of "Substantially change" to February 22, 2012 seems oddly stated, and might seem to have the effect of making the following criteria inapplicable to a facility that did not exist on that date?

20.49.120 – Right to Review or Revoke Permit.

- The transplanting of this section from Section 15.70.090 does not seem to have been entirely successful since it no longer explains all the circumstances under which the City reserves the right to review or revoke the permit.

20.49.130 – Removal of Telecom Facilities.

- **B. Abandonment**.
    - I have no problem with reducing the period from 180 days to 90 days, but the reason for doing this is not explained in the staff report.

Omissions

In addition to lack of clarity regarding the minimization of impacts on private properties, the proposed code omits important *Submission Requirements* currently found in Section 15.70.070. These included **the justification for the project, maps (including ones illustrating current and proposed coverage), visual simulations (including ones showing impacts on nearby residences), emission data, wind load calculations and evidence of permission to use property**. I don't know if some of this may be required for use permits in general, but much of it seems wireless-specific and it is very difficult to see how the reviewing authorities could make an intelligent decision about the application without this information.

Finally, I think the proposed code would benefit from comparison with how wireless applications are handled by other California cities. I suspect that beyond the clearer definitions cited above, there are many concepts and specific provisions that could be usefully incorporated.

Item 5c: Additional Material Received
Planning Commission July 19, 2012
PA2012-057

July 19, 2012

VIA ELECTRONIC MAIL
Newport Beach Planning Commission
c/o Janet Johnson Brown, Associate Planner
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663
jbrown@newportbeachca.gov

Re: Proposed Amendments to Wireless Telecommunications Facilities Ordinance

Dear Ms. Brown,

PCIA—The Wireless Infrastructure Association ("PCIA")[1] and the California Wireless Association ("CalWA")[2] writes to provide comment on the City of Newport Beach's proposed amendment to the Newport Beach Municipal Code to update regulations regarding wireless telecommunications facilities in light of the scheduled public hearing on the matter before the Planning Commission on Thursday, July 19, 2012. Attached please find the proposed amendments marked with comments. PCIA and CalWA respectfully request that Planning Commission defer action on this item until the industry has had an opportunity to sit down with staff and discuss the concerns reflected within this letter and in the attached mark-up.

PCIA and CalWA applaud the City of Newport Beach for recognizing that there have been numerous changes in Federal and State law regarding local regulation of wireless facilities, as well as a tremendous increase in the demand for wireless services that required the industry to change how it responds and keeps up with demand from its subscribers, especially in sophisticated communities like Newport Beach. We encourage the City to craft an ordinance that enables logical and intelligent deployment with an objective set of standards that comply with state and federal law and allows the timely provision of quality wireless service. To this end, in order to ensure that Newport Beach's efforts to modernize its wireless ordinance are as comprehensive as possible, PCIA and CalWA offer the attached mark-up of the draft amendments.

[1]PCIA is the national trade association representing the wireless infrastructure industry. PCIA's members develop, own, manage, and operate towers, rooftop wireless sites, and other facilities for the provision of all types of wireless, broadcasting and telecommunications services. With a mandate to facilitate the deployment of wireless infrastructure, PCIA and its members partner with communities across the nation to effect solutions for wireless infrastructure deployment that are responsive to the unique sensitivities and concerns of these communities.

[2]CalWA is a non-profit organization made up of volunteers who work in the wireless/telecommunications industry throughout California. Its goal is to raise awareness about the benefits of and to promote the wireless industry, to educate the public and political leaders on issues of importance to the wireless industry, and to cultivate working relationships within and between the industry, the public and political leaders.

Despite the importance of wireless services and its potential for job creation, local review of the placement of wireless facilities remains a persistent barrier to the deployment of wireless infrastructure. For example, the proposed amendments to Newport Beach's Municipal Code could better facilitate the deployment of wireless infrastructure in order to bring wireless service to Newport Beach's residents. PCIA and CalWA hope to work together with the Planning Commission to find a solution for wireless infrastructure deployment that is responsive to the City of Newport Beach's needs and concerns. For this reason, PCIA and CalWA urge that Planning Commission defer action on this item to allow time to consider and discuss the industry's concerns.

The Need for Wireless Infrastructure

Wireless services, from basic voice communication to mobile broadband, enable communication, productivity, mobility, and public safety. Wireless infrastructure is the backbone of wireless networks; without it, wireless services cannot be delivered to users. Wireless infrastructure enables use of spectrum by providing the vital link between the end-user and the network. The strategic deployment of wireless infrastructure improves the efficient use of limited spectrum resources, which in turn improves the performance of wireless services.

Wireless providers are currently undertaking a multi-faceted effort to deliver next-generation wireless services, such as 4G LTE, in addition to ensuring that current and next-generation networks have the capacity to handle the surge in traffic that comes with the increased adoption rates of smartphones, tablets and other data devices. Wireless networks must adapt to growing capacity demands due to an 1,800 percent increase in traffic on U.S. wireless networks in the last four years[3] and a projected growth of eighteen times current levels of mobile data traffic in the next five years.[4] Mobile Internet users are projected to outnumber wireline Internet users by 2015, when a majority of Americans will utilize a wireless device as their primary internet access tool.[5] This will result in two billion networked mobile devices by 2015.[6]

The need for rapid deployment extends beyond mere consumer convenience. More than 70 percent of all emergency calls are placed using a wireless device.[7] The ability to access fire, rescue and police services may be significantly hindered without wireless infrastructure, especially for those relying on wireless as their sole form of voice communications. As noted by the Federal Communications Commission ("FCC"),

> [T]he deployment of facilities without unreasonable delay is vital to promote public safety, including the availability of wireless 911, throughout the nation. The importance of wireless communications for public safety is critical, especially as consumers

[3] Mobile Future, 2011 Mobile Year In Review (Dec. 2011), *available at* http://mobilefuture.org/page/-/images/2011-MYIR.pdf.
[4] Quentin Hardy, The Explosion of Mobile Video, N.Y. Times, Feb. 14, 2012, *available at* http://bits.blogs.nytimes.com/2012/02/14/the-explosion-of-mobile- video/.
[5] Hayley Tsukayama, IDC: Mobile Internet Users to Outnumber Wireline Users by 2015, Washington Post, Sept. 12, 2011, *available at* http://www.washingtonpost.com/blogs/post-tech/post/idc-mobile- internet-users-to-outnumber-wireline-users-by- 2015/2011/09/12/gIQAkZP7MK_blog.html?wprss=post-tech.
[6] Mobile Future, 2011 Mobile Year In Review.
[7] FCC.gov, Guide: Wireless 911 Services, *available at* http://www.fcc.gov/guides/wireless-911-services.

increasingly rely upon their personal wireless service devices as their primary method of communication.[8]

As NENA observes:

> Calls must be able to be made from as many locations as possible and dropped calls must be prevented. This is especially true for wireless 9-1-1 calls which must get through to the right Public Safety Answering Point ("PSAP") and must be as accurate as technically possible to ensure an effective response. Increased availability and reliability of commercial and public safety wireless service, along with improved 9-1-1 location accuracy, all depend on the presence of sufficient wireless towers.[9]

For this reason, decisions on siting requests made by the personal wireless service industry were not intended by Congress to be subjected "to any but the generally applicable time frames for zoning decision[s]."[10] Thus, the adoption of special procedural schemes unique to wireless siting requests should be avoided.

The FCC Shotclock Declaratory Ruling and the California Permit Streamlining Act

In addition to the provisions of Section 337(c)(7) of the Communications Act of 1934 referred to in the staff report, subsection (B)(ii) of that section contains another requirement that the City should keep in mind when crafting its new ordinance. That provision requires that a "local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request."

The FCC recently adopted a Declaratory Ruling on November 18, 2009 under this subsection holding that "a 'reasonable period of time' is, presumptively, 90 days to process personal wireless service facility siting applications requesting collocations, and, also presumptively, 150 days to process all other applications."[11] Given the rate at which demand for advanced wireless services has been growing, and in particular the growth in the demand for bandwidth as a result of adoption of smart phones and wireless-enabled laptops and tablets, the need for speedy local approvals of proposed wireless deployments has become truly critical to providing the wireless services consumers demand.

Indeed, the FCC's presumptive timeframe for action may be superfluous given that California law has, for decades, contained absolute deadlines by which action must be taken. As you are no doubt aware, the California Permit Streamlining Act imposes a 60-day time limit for approving or denying a requested permit after a project has been determined to be categorically

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[8] *Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That* Classify *All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24 FCC Rcd 13994, 14021 ¶ 71 (2009) ("*Shot Clock Ruling*"), *recon. denied*, 25 FCC Rcd 11157 (2010), *aff'd*, City of Arlington, Tex., *et al*. v. FCC, 2012 U.S. App. LEXIS 1252 (5th Cir. 2012).

[9] *Shot Clock Ruling*, at 36.

[10] H.R. Conf. Rep. No. 104-458, 104th Congress, 2nd Sess. 208 (1996).

[11] *Shotclock Ruling.*

exempt from CEQA[12] or a negative declaration or mitigated negative declaration has been adopted.[13]

The Wireless Provisions in Middle Class Tax Relief and Job Creation Act of 2012

Staff failed to mention the Middle Class Tax Relief and Job Creation Act of 2012, enacted with bipartisan support and signed into law by President Obama on February 22, 2012. One of the measures included in the Act was the creation of a nationwide interoperable broadband network for first responders. In addition to authorizing the FCC to allocate necessary spectrum for this new interoperable network, the Act also contained provisions designed to establish voluntary incentive auctions of wireless spectrum, which are expected to raise $15 billion over the next eleven years. Seven billion dollars of the auction proceeds have been allocated for public safety broadband network build out.

The Act reflects an implicit acknowledgement that realizing the financial viability of the spectrum auctioned depends on the ease with which purchasers can deploy the infrastructure needed to utilize it. At the same time, it allays local concerns over the potential impact of the construction of new sites. In a carefully crafted attempt to address both industry and local concerns, Section 6409 of the Act streamlines, and thereby incentivizes the use of, modification of existing sites in lieu of new builds. Although the staff proposals reflect a similar recognition of the need for streamlined review of modifications, PCIA and CalWA provide herewith a detailed explanation of this recent law due to concerns that the definitions provided in the report fail to reflect those adopted and utilized by the FCC.

Section 6409 of the Act requires state and local governments to approve an eligible facilities request for the modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. Section 6409 applies to “eligible facilities requests” for modification of existing wireless towers and base stations. The Act defines "eligible facilities request" as any request for modification of an existing wireless tower or base station that involves:

- Collocation of new transmission equipment;
- Removal of transmission equipment; or
- Replacement of transmission equipment.

Many of the terms employed in the section are concepts that were hammered out in negotiations between local government and industry representatives in an agreement that was adopted by reference in regulations promulgated by the FCC. Thus, for example, "collocation" has been defined as "the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes."[14]

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[12]Gov. Code § 65950(a)(4).
[13]Gov. Code § 65950(a)(3).
[14]Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (2001), *available* at 47 C.F.R. Part I, Appendix B ("Collocation Agreement"). *See also Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance,* Declaratory Ruling, 24

The same agreement also addressed the issue of what constitutes a substantial change in the size of a tower:

- The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or
- The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
- The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. [15]

In this agreement, a "tower" is defined as "any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities.[16] While the concept of a "base station" is not referenced in the agreement, the term has a long-established meaning consistently used throughout both FCC regulations and case law, namely a fixed location from which wireless signals are transmitted. For example, FCC regulations define a “base station” as "[a] station at a specified site authorized to communicate with mobile stations;" or "A land station in the land mobile service.”[17] We urge the Planning Commission to use these well recognized definitions within its Ordinance.

FCC Rcd 13994, 14021 1171 (2009) *("Shot Clock Ruling"), recon. denied,* 25 FCC Rcd 11157 (2010), *aff'd,* City of Arlington, Tex., et al. v. FCC, 2012 U.S. App. LEXIS 1252 (5th Cir. 2012).

[15]Collocation Agreement, note, above.

[16]*Id.*

[17]See, e.g., 47 C.F.R. §§24.5, 90.7.

Conclusion

Reliable wireless communications are no longer a luxury. Wireless facilities provide a platform for broadband accessibility, creating a link from the City of Newport Beach to the world through high-speed Internet access. The City of Newport Beach has an opportunity to facilitate expanded wireless coverage to its citizens, businesses, and first responders by moving forward with amending its code in consideration of the wireless infrastructure industries' suggestions provided herewith.

PCIA and CalWA hope to participate in the ordinance revision process as it develops, if Planning Commission defers action on this item to consider the industry's concerns. We appreciate your support to further our mutual goal of implementing and deploying responsible and timely wireless infrastructure to serve the City of Newport Beach, CA.

Sincerely,

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EXHIBIT "A"

Chapter 20.49 – Wireless Telecommunications Facilities

CalWA Comment No. 1: Some recognition that this land use is in fact a "utility" (as defined in the States Constitution) and additional tolerance and balance similarly to how other utilities are viewed aesthetically should be afforded this critical land use as well. This "purpose" raises aesthetics above all other considerations unfairly as compared to other utility land uses.

Sections:

20.49.010 – Purpose and Intent.

A. **Purpose.** The purpose of this Chapter is to provide for wireless telecommunication facilities ("Telecom Facilities") on public and private property consistent with federal law while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes, protecting scenic, ocean and coastal public views, and otherwise mitigating the impacts of such facilities. More specifically, the regulations contained herein are intended to:

1. Encourage the location of Antennas in non-residential areas.
2. Strongly encourage Collocation at new and existing Antenna sites.
3. Encourage Telecom Facilities to be located in areas where adverse impacts on the community and public views are minimized.

B. The provisions of this Chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This Chapter shall be applied to providers, operators, and maintainers of wireless services regardless of whether authorized by state or federal regulations. This Chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.

20.49.020 – General Provisions.

A. **Applicability.** These regulations are applicable to all Telecom Facilities providing voice and/or data transmission such as, but not limited to, cell phone, internet and radio relay stations.

B. **Permit and/or Agreement Required.**

1. Prior to construction of any Telecom Facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), or Limited Term Permit (LTP), depending on the proposed location and Antenna Classes, in accordance with Section 20.49.070 (Permit Review Procedures).

CalWA Comment No. 2: This section needs to incorporate a reference to 20.49.100 where there could be ministerial permits issued for modifications. Also CalWA recommends a ministerial permit be an option for Class 1 and Class 2 facilities under the circumstance when the facilities are located in non-residential zones and are otherwise not visible.

2. Applicants who obtain a MUP, CUP or LTP (and an encroachment permit, if required) for any Telecom Facility approved to be located on any City-owned property or City-held Trust property, shall enter into an agreement prepared and executed by the City Manager or its designee prior to construction of the Facility, consistent with Section 20.49.090 (Agreement for Use of City-owned or City-held Trust Property).

C. Exempt Facilities. The following types of facilities are exempt from the provisions of this Chapter:

1. Amateur radio antennas and receiving satellite dish antennas, and citizen band radio antennas regulated by Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities).
2. Dish and other antennas subject to the FCC Over-the-Air Reception Devices ("OTARD") rule, 47 C.F.R. § 1.4000 that are designed and used to receive video programming signals from (a) direct broadcast satellite services, or (b) television broadcast stations, or (c) for wireless cable service.
3. During an emergency, as defined by Title 2 of the NBMC, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a Telecom Facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause.
4. Facilities exempt from some or all of the provisions of this Chapter by operation of state or federal law to the extent so determined by the City.
5. Systems installed or operated at the direction of the City or its contractor.

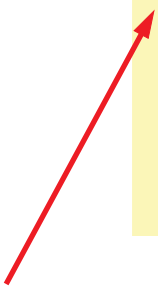
D. Other Regulations. Notwithstanding the provisions of this Chapter, all Telecom Facilities within the City shall comply with the following requirements:

1. Rules, regulations, policies, or conditions in any permit, license, or agreement issued by a local, state or federal agency which has jurisdiction over the Telecom Facility.
2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).

E. Regulations not in Conflict or Preempted. All Telecom Facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this Chapter:

1. All applicable City design guidelines and standards.
2. Requirements established by any other provision of the Municipal Code and by any other ordinance and regulation of the City.

F. Legal Nonconforming Facility. Any Telecom Facility that is lawfully constructed, erected, or approved prior to the effective date of this Chapter, or for which the application for a proposed Telecom Facility is deemed complete prior to the effective date of this Chapter, in compliance with all applicable laws, and which Facility does not conform to the requirements of this Chapter shall be accepted and allowed as a legal nonconforming Facility if otherwise approved and constructed. Legal nonconforming Telecom Facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time the application was deemed complete, and any applicable federal and state laws as they may be amended or enacted, and shall at all times comply with any conditions of approval.



CalWA Comment No. 3: Are legal nonconforming amortizations applicable under any circumstances to WTF's that are classified as "Legal Nonconforming Facilities"?

CalWA Comment No. 4: The definition of "Base Station" should include the entire structure and antenna facilities as defined by the FCC.

20.49.030 – Definitions.

For the purposes of this Chapter, the following definitions shall apply:

Antenna. Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, Antennas, arrays, or other similar devices.

Antenna Array. Antenna Array means Antennas having transmission and/or reception elements extending in more than one direction, and directional Antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and Antenna support, all of which elements are deemed to be part of the Antenna.

Antenna Classes. Antenna Classes are Telecom Facilities and the attendant Support Equipment separated into distinct "antenna classes."

Base Station. Base Station means the electronic equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. Base Station does not include the Antennas and Antenna support structure, or the Support Equipment, nor does it include any portion of DAS.

City-owned or City-held Trust Property. City-owned or City-held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City's jurisdiction, including but is not limited to City Hall, Police and Fire facilities, recreational facilities, parks, libraries, monuments, signs, streetlights and traffic control standards.

Collocation. Collocation means an arrangement whereby multiple Telecom Facilities are installed on the same building or structure.

Distributed Antenna System, DAS. Distributed Antenna System (DAS) means a network of one or more Antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a "hub" or "hotel" where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.

FCC. FCC means the Federal Communications Commission, the federal regulatory agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.

Feasible. Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal and technological factors.

Lattice Tower. Lattice Tower means a freestanding open framework structure used to support Antennas, typically with three or four support legs of open metal crossbeams or crossbars.

Monopole. Monopole means a single free-standing pole or pole-based structure solely used to act as or support a Telecom Antenna or Antenna Arrays.

CalWA Comment No. 5: This component of the definition is not clear as "Base Station" and "Suport Equipment" would seem to be inclusive of each other. Please clarify.

Operator or Telecom Operator. Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility or facilities within the City.

Public Right-of-Way. Public Right-of-Way or ("PROW") means the improved or unimproved surface of any street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots.

Stealth or Stealth Facility. Stealth or Stealth Facility means a Telecom Facility in which the Antenna, and the Support Equipment, are completely hidden from view in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average observer do not qualify within this definition.

Support Equipment. Support Equipment means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or contribute to the processing of signals from or to the Facility's Antenna or Antennas, including but not limited to cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support Equipment does not include the Base Station, DAS, Antennas or the building or structure to which the Antennas are attached.

Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or Facility. Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or simply Facility or Facilities means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.

Utility Pole. Utility Pole means a single freestanding pole used to support services provided by a public or private utility provider.

Utility Tower. Utility Tower shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.

Wireless Tower. Wireless Tower means any structure built for the sole or primary purpose of supporting Antennas used to provide wireless services authorized by the FCC. A Distributed Antenna System (DAS) installed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission on a water tower, utility tower, street light, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901, is not a Wireless Tower for purposes of this definition. For an example only, a prior-existing light standard which is replaced with a new light standard to permit the addition of Antennas shall not be considered a Wireless Tower, but rather a replacement light standard.

CalWA Comment No. 6: Overemphasis of "aesthetics". More tolerance and balance should be afforded this land use in recognition of the critical infrastructure and "utility" that it is.

20.49.040 – Available Technology.

All Telecom Facilities approved under this Chapter shall utilize the most efficient, diminutive, and least obtrusive available technology in order to minimize the number of Telecom Facilities in the City and reduce their visual impact on the community and public views.

20.49.050 – Location Preferences.

A. Preferred Locations. The following is the order of preference for the location and installation of Telecom Facilities, from highest priority location and technique to lowest. Antenna Classes are the Telecom Facilities and their attendant accessory/Support Equipment separated into the following distinct Antenna Classes based on observed aesthetic impacts, as follows:

Class 1 (Camouflaged/Screened): A Telecom Facility with Antennas mounted on an existing or proposed non-residential building or other structure not primarily intended to be an antenna support structure. The Antennas, Base Station, and Support Equipment are fully screened so that they are not visible to the general public. Typical examples include:

- Wall or roof mounted Antennas that are screened behind radio-frequency transparent, visually-opaque screen walls that match or complement existing exterior surfaces of the building or structure to which they are attached.
- Antennas designed to be incorporated within an architectural feature of a building or structure such as a steeple, cross, cupola, sign, monument, clock tower or other architectural element.
- Base Station equipment that is contained within an existing structure, or placed into a new attached structure that matches or complements the existing exterior surfaces of the building or structure

CalWA Comment No. 7: This additional requirement is not warranted nor relavent to a Collocation. Please remove.

Class 2 (Collocation): A Telecom Facility with Antennas and/or Base Stations co-located on an approved existing Telecom Facility and mounted in the same manner with materially the same or improved screening, or the same camouflage design techniques as the approved or existing Telecom Facility. Class 2 Collocation Telecom Facilities also may incorporate flush-to-grade underground Base Station enclosures including flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view.

Class 3 (Visible): A Telecom Facility with Antennas mounted on an existing non-residential building, structure, pole, light standard, Utility Tower, and/or Lattice Tower. The structure is treated with some camouflage design techniques, but the Antenna panels and some portions of the pole, light standards, Utility Tower, or Lattice Tower are still visible. Typical examples include:

- Antennas mounted on the exterior of an existing building so that the panels are visible, but painted to match the color and texture of the building or structure.
- Antennas flush-mounted atop an existing pole or light standard that are unscreened or un-camouflaged, or attached to an existing pole or light standard utilizing a cylindrical Antenna unit that replicates the diameter and color of the pole or standards.
- Antenna panels installed on existing electrical or other Utility Towers, or existing Lattice Towers.

CalWA Comment No. 8: WTF mounted on existing utility infrastructure should be encourage and promoted via Class 1 designation.

CalWA Comment No. 9: This type of facility should be Class 1. Please reclassify as a facility that is within a rock or shrub type facility is very low profile and minimally visible, if at all.

Class 4 (Freestanding Structure): A Facility with Antennas mounted on a new freestanding structure constructed for the sole or primary purpose of supporting the Telecom Facility. The Telecom Facility is designed to replicate a natural feature or is a Monopole or Lattice Tower. The Antennas are either unscreened and visible, or camouflaged/designed to blend in with their surroundings. Typical examples include:

CalWA Comment No. 10: These types of facilities should be included with Class 3 type facilities as they are "stealthed/ camoflauged and should be incentivised.

- Antennas mounted inside or behind elements that replicate natural features such as rocks and shrubbery and located in hillsides or other natural areas where the Telecom Facility blends into the surrounding vegetation or topography (e.g. false rocks or shrubbery).
- A Telecom Facility consisting of Antennas mounted on or inside a freestanding structure that uses camouflage to disguise the Antennas (e.g. monotree, flagpole, or other freestanding structure).
- A Telecom Facility consisting of Antennas on the exterior of a freestanding structure that is unscreened/un-camouflaged (e.g. Monopoles or Lattice Tower).

Class 5 (Temporary): A Wireless Tower, Antennas and/or Base Station, and associated Support Equipment system that is a temporary Telecom Facility on a site until a permanent (separately approved) Telecom Facility to provide coverage for the same general area is operational but such placement of a temporary Telecom Facility shall not exceed 1 year, consistent with Section 20.52.040. A Wireless Tower, Antennas and/or Base Station, and associated Support Equipment system that is a temporary Telecom Facility located on a site in connection with a special event, as that term may be defined in Municipal Code Section 11.03.020 (General Provisions), may be allowed only upon approval of a Special Events Permit, as regulated by Chapter 11.03. Class 5 installations include but are not limited to equipment mounted on trailers, trucks, skids, or similar portable platforms.

B. Prohibited Locations. Telecom Facilities are prohibited in the following locations:

CalWA Comment No. 11: Facilities should be permitted in these zones if not utilized as a residential use.

1. On properties zoned for single-unit or two-unit residential development, including equivalent PC District designation.
2. On properties zoned for multi-unit residential development and mixed-use development consisting of four (4) dwelling units or less.
3. In the Open Space (OS) zoning district, unless Telecom Facilities are collocated on an existing Utility Tower within a utility easement area, or collocated on an existing Telecom Facility.

C. Installations in the Public Right-of-Way. All Telecom Facilities proposed to be located in the public right-of way shall comply with the provisions of Title 13, and notwithstanding any provisions contained in Title 13 to the contrary, shall be subject to the following:

CalWA Comment No. 12: Open space should be a permitted zone for this critical utility infrastructure.

1. All Support Equipment shall be placed below grade in the public right-of-way where the existing utility services (e.g., telephone, power, cable TV) are located underground. Exception: Any pedestal meter required for the purpose of providing electrical service power for the proposed Telecom Facility may be allowed to be installed above ground in a public right-of-way.
2. Whenever Feasible, new Antennas proposed to be installed in public right-of-way shall be placed on existing or replacement utility structures, light standards, or other existing vertical structures.
3. Any proposed installation in the public right-of-way shall comply with all requirements of the Americans with Disability Act (ADA), and all other laws, rules, and regulations.

CalWA Comment No. 13: The "General Criteria" primarily focuses on "aesthetics" and weights that criteria above all other concerns. No other utility infrastructure must adhere to such unbalanced criteria and wireless infrastructure. CalWA requests that the City begin to look in a more balanced and tolerant manner towards this utility as is afforded all other utility infrastructure.

D. Collocation Installations.

1. When Required. To limit the adverse visual effects of and proliferation of individual Telecom Facilities in the City, a new Telecom Facility proposed within one thousand (1,000) feet of an existing Telecom Facility shall be required to collocate on the same building or structure as the existing Telecom Facility. Exception: If the reviewing authority determines, based on compelling evidence submitted by the applicant, that Collocation of one or more new Telecom Facilities within one thousand (1000) feet of an existing Telecom Facility is not Feasible, and all findings required to grant approval of a MUP, CUP or LTP for a Telecom Facility can be met, then such Collocation shall not be required.
2. Condition Requiring Future Collocation. In approving a Telecom Facility, the review authority may impose a condition of approval providing for future Collocation of Telecom Facilities by other carriers at the same site.

20.49.060 – General Development and Design Standards.

A. General Criteria. All Telecom Facilities shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the Telecom Facility as visually inconspicuous as possible. To the greatest extent Feasible, Telecom Facilities shall be designed to minimize the visual impact of the Telecom Facility by means of location, placement, height, screening, landscaping, and camouflage, and shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area. Where an existing structure is replaced to allow for the addition of a Telecom Facility, the replacement structure shall retain as its primary use and purpose that of the prior-existing structure. For an example, where a streetlight standard is replaced with a different streetlight standard to allow for the additional installation of Antennas, the primary use shall remain as a streetlight.

In addition to the other design standards of this Section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP or LTP for a Telecom Facility:

1. Blending. The extent to which the proposed Telecom Facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.
2. Screening. The extent to which the proposed Telecom Facility is concealed, screened or camouflaged by existing or proposed new topography, vegetation, buildings or other structures.
3. Size. The total size of the proposed Telecom Facility, particularly in relation to surrounding and supporting structures.
4. Location. Proposed Telecom Facilities shall be located so as to utilize existing natural or man-made features in the vicinity of the Telecom Facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.

B. Public View Protection. Telecom Facilities involving a site adjacent to an identified public view point or corridor, as identified in General Plan Policy NR 20.3 (Public Views), shall be reviewed to evaluate the potential impact to public views consistent with Section 20.30.100 (Public View Protection).

C. Height. All Telecom Facilities shall comply with Antenna height restrictions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060.E. (Airport Environs Land Use Plan (AELUP) for John Wayne Airport and Airport Land Use Commission (ALUC) Review Requirements) as may be in force at the time the Telecom Facility is permitted or modified.

1. Maximum Height. Antennas shall be installed at the minimum height possible to provide average service to the Telecom Operator's proposed service area. In any case, no Antenna or other telecom equipment or screening structure shall extend higher than the following maximum height limits:

CalWA Comment No. 14: These types of facilities should be permitted in residential districts that are developed non-residential land uses.

a. Telecom Facilities installed on existing streetlight standards, traffic control standards, Utility Poles, Utility Towers or other similar structures within the public right-of-way shall not exceed 35 feet in height above the finished grade.
b. Telecom Facilities may be installed on existing Utility Poles or Utility Towers that exceed 35 feet above the finished grade where the purposes of the existing Utility Pole or Utility Tower is to carry electricity or provide other wireless data transmission provided that the top of the Antenna does not extend above the top of the Utility Pole or Utility Tower.

CalWA Comment No. 15: Additional heights should be permitted up to 10 feet above the base height as additional height could result in lesser overall facilities and will allow for additional collocations further reducing the number of overall facilities needed in the future.

c. Telecom Facilities installed in ground-mounted flagpoles may be installed at a maximum height of 35 feet in nonresidential districts only, and shall not exceed 24 inches in width at the base of the flagpole and also shall not exceed 20 inches in width at the top of the flagpole. As a condition of approval, flagpole sites shall comply with 4 U.S.C. § 1 *et seq.* (the "U.S. Flag Code").
d. Telecom Facilities may be installed on buildings or other structures to extend up to 5 feet above the base height limit established in Part 2 (Zoning Districts, Allowable Uses, and Zoning District Standards) for the zoning district in which the Telecom Facility is located.
e. Applications for the installation of Telecom Facilities proposed to be greater than 5 feet above the base height limit may be installed up to the maximum height limit for the zoning district in which the Telecom Facility is located in accordance with Section 20.30.060.C.2 (Height Limit Areas), subject to review and action by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP for a Telecom Facility to exceed the base height limit by more than 5 feet after making all of the required findings in Section 20.49.070.H (Permit Review Procedures).

2. Over-Height Buildings or Structures. Stealth Telecom Facilities may be installed within or on structures that are permitted to exceed the height limit for the zoning district in which the structure is located, either by right under Title 20 or which have received a discretionary approval, so long as the height of the structure is not being increased. The standard of review shall be based on the type of installation and Antenna Classes being used.

D. Setbacks. Proposed Telecom Facilities shall comply with the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located. Setbacks shall be measured from the part of the Telecom Facility closest to the applicable lot line or structure. For ground-mounted Wireless Towers installed on public property or private property, unless the review authority determines a smaller setback would be appropriate based on the surrounding development or uses, the setback

CalWA Comment No. 17: This land use is by definition a "utility". As critical "utility infrastructure" some tolerance of "aesthetics" associated with utility infrastructure needs to considered and afforded this land use as it is afforded other "utilities". Over emphasis of "aesthetics".

CalWA Comment No. 16: This is unecessary and could exclude many good opportunities for appropriate locations. This requirement should be removed.

shall be the greater of: a) the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located; or b) 110% of the maximum height of the Wireless Tower including any Antenna or Antenna enclosures attached thereto.

E. Design Techniques. Design techniques shall result in the installation of a Telecom Facility that is in scale with the surrounding area, hides the installation from predominant views from surrounding properties, and prevents the Telecom Facility from visually dominating the surrounding area. Design techniques may include the following:

1. Screening elements to camouflage, disguise, or otherwise hide the Telecom Facility from view from surrounding uses.
2. Painting and/or coloring the Telecom Facility to blend into the predominant visual backdrop.
3. Siting the Telecom Facility to utilize existing features (buildings, topography, vegetation, etc.) to screen, camouflage, or hide the Telecom Facility.
4. Utilizing simulated natural features (trees, rocks, etc.) to screen, camouflage, or hide the Telecom Facility.
5. Providing Telecom Facilities of a size that, as determined by the City, is not visually obtrusive such that any effort to screen the Telecom Facility would create greater visual impacts than the Telecom Facility itself.

F. Screening Standards. Following is a non-exclusive list of potential design and screening techniques that should be considered based on the following Antenna Classes:

1. For Class 1 (Camouflaged/Screened) Antenna Installations:
   a. All Telecom Facility components, including all Antenna panels and Support Equipment, shall be fully screened, and mounted either inside the building or structure, or behind the proposed screening elements and not on the exterior face of the building or structure.
   b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
   c. In conditions where the Antennas and Support Equipment are installed within a new freestanding structure, (an architectural feature such as a steeple, religious symbol or tower, cupola, clock tower, sign, etc.), the installation shall blend in the predominant visual backdrop so it appears to be a decorative and attractive architectural feature.

CalWA Comment No. 17: How is this section anticipated to be applied? Wholesale change out of the WTF would not be acceptable. Please clarify.

2. For Class 2 (Collocation) Antenna Installations:
   a. A Collocation installation shall use screening methods materially similar to those used on the existing Telecom Facility and shall not diminish the screening of the existing Telecom Facility.
   b. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the Antennas, Base Station, and Support Equipment from public view.

3. For Class 3 (Visible) Antenna Installations:
   a. Building or structure mounted Antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are mounted and shall be compatible with the architectural texture and materials of the building to which the

CalWA Comment No. 18A: The requirement for locating associated radio transmission/amplificaton equipment inside the streetlight pole or traffic control standard "without increasing the pole width or shall be mounted in a flush-to-grad enclosure adjacent to the base of the pole" is onerous and cost prohibitive. It is also unequitable treatment when compared to other utility infrastructure within the ROW. We request an option for above ground equipment be available.

Antennas are mounted. No cables and mounting brackets or any other associated equipment or wires shall be visible from above, below or the side of the Antennas.

b. All Antenna components and Support Equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.

c. Antenna installations in the public right-of-way and/or on an existing or replacement streetlight pole or traffic control standard shall be limited to Antennas, Supporting Equipment, and cable components that are compatible in scale and proportion to streetlights and traffic control standards and the poles on which they are mounted. All transmission or amplification equipment such as remote radio units, tower mounted amplifiers and surge suppressors shall be mounted inside the streetlight pole or traffic control standard without increasing the pole width or shall be mounted in a flush-to-grade enclosure adjacent to the base of the pole.

CalWA Comment No. 18: If this additional screening is done this type of facility should be Class 1.

d. Antenna installations on existing or replacement streetlight poles, traffic control standards, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible, and treated with exterior coatings of a color and texture to match the existing pole. If Antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the existing pole.

CalWA Comment No. 19: This should be a Class 1 type facility

e. Antennas shall be mounted on existing poles wherever Feasible. If a new pole is proposed to replace the existing pole, the replacement pole shall be consistent with the size, shape, style and design of the existing pole, including any attached light arms.

4. For Class 4 (Freestanding Structure) Antenna Installations:

a. For a false rock, the proposed screen structure shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A false rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.

b. The installation of a false tree (such as but without limitation a monopine or monopalm, or false shrubbery) shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. For false trees or shrubbery installations, all Antennas and Antenna supports shall be contained within the canopy of the tree design, and other vegetation comparable to that replicated in the proposed screen structure shall be prevalent in the immediate vicinity of the antenna site, and the addition of new comparable living vegetation may be necessary to enhance the false tree or shrubbery screen structure.

CalWA Comment No. 20: In industrial/ manufacturing zones this design option is appropriate and helps reduce costs of facilities for all. Also in proximity to transmission lattice towers similar lattice tower designs are most appropriate.

c. The installation of a new Monopole or Lattice Tower is prohibited unless the applicant by use of compelling evidence can show to the satisfaction of the review authority that higher priority locations or Stealth Facilities are either not available or are not Feasible.

5. For Class 5 (Temporary) Antenna Installations:

a. A temporary Telecom Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the permitting process reflecting the temporary nature of the Telecom Facility.

CalWA Comment No. 21: Need clarification on this Class?

6. Support Equipment. All Support Equipment associated with the operation of any Telecom Facility including but not limited to the Base Station shall be placed or mounted in the least visually obtrusive location possible, and shall be screened from view. The following is a non-exclusive list of potential screening techniques that may be utilized based on the type of installation:

CalWA Comment No. 22: This is not a feasible option. Should be removed.

a. Building-Mounted Facilities. For building or structure-mounted Antenna installations, Support Equipment for the Telecom Facility may be located inside the building, in an underground vault, or on the roof of the building that the Telecom Facility is located on, provided that both the equipment and screening materials are painted the color of the building, roof, and/or surroundings. All screening materials for roof-mounted Telecom Facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which it is mounted. If determined necessary by the review authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.

b. Freestanding Facilities. For freestanding Telecom Facilities installations, not mounted on a building or structure, Support Equipment for the Telecom Facility:

- Shall be visually screened by locating the Support Equipment in a fully enclosed building or in an underground vault, or
- Shall be screened in a security enclosure consisting of walls and/or landscaping to effectively screen the Support Equipment at the time of installation. All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings.
- Screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a “closed-mesh” design (i.e. one-inch gaps) or may consist of an alternate enclosure design approved by the review authority. In general, the screening enclosure shall be made of non-reflective material and painted or camouflaged to blend with surrounding materials and colors.

CalWA Comment No. 23: It is not feasible to provide above ground support equipment within the pole without some reasonable increase in width being permitted. This section should be redrafted.

c. Installations in a Public Right-of-Way. Support Equipment approved to be located above ground in a public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.

G. Night Lighting. Telecom Facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be required by the U.S. Flag Code. Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties. The review authority shall consult with the Police Department regarding proposed security lighting for Telecom Facilities on a case-by-case basis.

H. Signs and Advertising. No advertising signage or identifying logos shall be displayed on any Telecom Facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the review authority. Signage required by state or federal regulations shall be allowed in its smallest permissible size.

I. Nonconformities. A proposed Telecom Facility shall not create any new or increased nonconformities as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones.

J. Maintenance. The Telecom Operator shall be responsible for maintenance of the Telecom Facility in a manner consistent with the original approval of the Telecom Facility, including but not limited to the following:

1. Any missing, discolored, or damaged camouflage or screening shall be restored to its original permitted condition.
2. All graffiti on any components of the Telecom Facility shall be removed promptly in accordance the Newport Beach Municipal Code.
3. All landscaping required for the Telecom Facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead or dying.
4. All Telecom Facilities shall be kept clean and free of litter.
5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the Facility Operator.
6. If a flagpole is used for a Telecom Facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag shall comply with the provisions of the U.S. Flag Code.

CalWA Comment No. 25: For those facilities that are not visible and not within a residential zone nor within 150' of a residential zone a ministerial permit option to incentivize and reduce processing costs and time should be an option.

CalWA Comment No. 24: More incentivized zoning principles should be incorporated into the "Permit Review Procedures".

20.49.070 – Permit Review Procedures.

The procedures and requirements for preparation, filing, and processing of a permit application for a Telecom Facility shall be as specified in Chapter 20.50 (Permit Application Filing and Processing) unless otherwise noted below.

A. Permit Required. All applicants for Telecom Facilities shall apply for a MUP, CUP or LTP, from the Community Development Department, depending on the Antenna Class, height, and duration, as specified in the table below:

Table 4-1
Permit Requirements for Telecom Facilities

Antenna Class	Location of Proposed Telecom Facility		
	Located in a Nonresidential District more than 150 feet from a Residential (or Equivalent PC) District or Open Space District or Public Park or Public Facility zoned PR or PF	Located inside or within 150 feet of any Open Space District or Public Park or Public Facility zoned PR or PF	Located inside or within 150 feet of any Residential District or Equivalent PC District
Class 1 Antenna (a) (Camouflaged/Screened)	MUP	MUP	MUP
Class 2 Antenna (a) (b) (Collocation)	MUP	MUP	CUP
Class 3 Antenna (a) (Visible)	MUP	MUP	CUP

CalWA Comment No. 25: For Nonresidential there should be a lesser ministerial process to further insentivize the nonresidential locations.

CalWA Comment No. 26: No Collocation should require a CUP.

CalWA Comment No. 27: Should be allowed via MUP if within height limits of underlying zone and "stealthed".

CalWA Comment No. 28: For WTF located in Residential Zones with non-residential land uses, a MUP or ministerial permit should be afforded if completely screened.

CalWA Comment No. 29: Is this for emergency facilities? Not clear.

Antenna Class	Location of Proposed Telecom Facility		
Class 4 Antenna (a) (c) (Freestanding Structure)	MUP	CUP	CUP
Class 5 Antenna (a) (c) (d) (Temporary)	LTP	LTP	LTP

CalWA Comment No. 30: Has the City conducted Environmental Reviews on wireless facilities as a matter of routine or are most facilities determined to be "Exempt" from the provisions of CEQA (Categorically).

(a) Any application for a Telecom Facility that proposes to exceed the base height limit of the applicable zoning district in which the Telecom Facility is located by greater than five (5) feet shall require review and action of a CUP by the Planning Commission. Pursuant to this provision, an application that would otherwise be subject to review by the Zoning Administrator would become subject to review by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP, subject to the required findings in Subparagraph H, below.

(b) The review procedure for Collocated Telecom Facilities shall be consistent with the applicable review procedure as identified elsewhere in this table depending on the type of installation and Antenna Class being proposed for the Collocation, unless the Collocated Telecom Facility meets the requirements of California Government Code § 65850.6, or involves the Collocation of new transmission equipment and is consistent with the provisions in Section 20.49.100 (Modification of Existing Telecom Facilities).

(c) Antennas mounted on or within flagpoles, and temporary Telecom Facilities shall not be permitted on properties either used or zoned residentially.

CalWA Comment No. 31: What is the purpose of this limitation? This excludes numerous appropriate land use locations that are zoned residential but may have other land uses, ie. churches which provide excellent locations in proximity to residential uses where these facilities are extremely necessary.

(d) Temporary Telecom Facilities shall be subject to the standard of review for an LTP, pursuant to Section 20.52.040 (Limited Term Permits).

B. Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties. Prior to the submittal for any application for any Telecom Facility located on any City-owned property or City-held trust property, the applicant shall first obtain written authorization from the City Manager or its designee to submit an application.

C. Fee. All costs associated with the permit application review shall be the responsibility of the applicant, including any expense incurred for any outside technical or legal services in connection with the application.

D. Review Process. Review of applications for all Telecom Facilities in City shall be consistent with Chapter 20.50 (Permit Application Filing and Processing), and the FCC Declaratory Ruling FCC 09-99 ("Shot Clock") deadlines.

E. Review of Collocated Facilities. Notwithstanding any provision of this Chapter to the contrary, pursuant to California Government Code section 65850.6 (as amended or superseded), the addition of a new Telecom Facility to an existing Telecom Facility resulting in the establishment of a Collocated Telecom Facility shall be a permitted use not requiring a discretionary permit provided the underlying Telecom Facility was granted a discretionary permit and was subject to either an environmental impact report, mitigated negative declaration or negative declaration. If such a Collocated Telecom Facility does not satisfy all of the requirements of Government Code section 65850.6, it shall be reviewed pursuant the review procedures contained in Section 20.49.070 (Permit Review Procedures).

F. Emergency Communications Review. At the time an application is submitted to the Community Development Department, a copy of the Plans, Map, and Emission Standards shall be sent to the Chief of the Newport Beach Police Department. The Police Department or its designee shall review the plan's potential conflict with emergency communications.

CalWA Comment No. 32: Has it been the practice to conduct Environmental Reviews pursuant to CEQA for facilities in Newport Beach? If so then would this State Code section be invoked?

CalWA Comment No. 33: This requirement is inconsistent with State and Federal Collocation laws. Some recognition of the Class 1 type facility and collocations should be included herein. Also further incentivization of process would be the ministerial permit for Class 1 and collocations that are consistent with State Code section, 65850.6.

The review may include a pre-installation test of the Telecom Facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the Telecom Facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference. .

G. Public Notice and Public Hearing Requirements. An application for a Telecom Facility shall require a public notice, and a public hearing shall be conducted, in compliance with Chapter 20.62 (Public Hearings).

H. Required Findings for Telecom Facilities. The following findings shall apply to all Telecom Facilities:

1. General. The review authority indicated in Table 4-1 may approve or conditionally approve an application for a Telecom Facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following:

CalWA Comment No. 34: These criteria are extremely subjective and do not consider the technical requirements of the land use. These criteria are unbalanced with overemphasis on "aesthetics".

a. The proposed Telecom Facility is visually compatible with the surrounding neighborhood.
b. The proposed Telecom Facility complies with the technology, height, location and design standards, as provided for in this Chapter.
c. An alternative site(s) located further from a Residential District, Public Park or Public Facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.
d. An alternative Antenna construction plan that would result in a higher priority Antenna Class category for the proposed Telecom Facility is not available or reasonably Feasible and desirable under the circumstances.

2. Findings to Increase Height. The review authority may approve, or conditionally approve an application for a Telecom Facility which includes a request to exceed the base height limit for the zoning district in which the Telecom Facility is located by more than 5 feet only after making each of the following findings in addition to the required findings above, as well the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):

CalWA Comment No. 35: Additional height should be permitted as required. An addiitonal 5' only is too onerous and will result in many more facilties being required

a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed Telecom Facility and existing adjacent developments or public spaces.
b. Establishment of the Telecom Facility at the requested height is necessary to provide service.

20.49.080 – Permit Implementation, Time Limits, Extensions, and Appeals.

A. The process for implementation or “exercising” of permits issued for a Telecom Facility, time limits, and extensions, shall be in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions).

B. Appeals. Any appeal of the decision of the review authority of an application for a Telecom Facility shall be processed in compliance with Chapter 20.64 (Appeals).

CalWA Comment No. 36: CalWA requests that this process be concurrent rather than linear.

20.49.090 – Agreement for Use of City-Owned or City-Held Trust Property.

When applying for a permit pursuant to this Chapter, all Telecom Facilities located on City-owned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions in the City Council Policy Manual.

Prior to entering into an agreement, the applicant shall obtain a MUP, CUP or LTP. Upon the issuance of a MUP, CUP or LTP, as required, and upon entering into an agreement, the applicant shall obtain any and all other necessary permits, including, encroachment permits for work to be completed in the public right-of-way, building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements.

20.49.100 – Modification of Existing Telecom Facilities.

Notwithstanding any provision in this Chapter of the Zoning Code, a request for a modification of an existing Wireless Tower or Base Station that involves:

a. The Collocation of new transmission equipment;
b. The removal of existing transmission equipment; or
c. The replacement of existing transmission equipment

CalWA Comment No. 37: What is an example of a "Telecom Facility that does not qualify as a Wireless Tower or Base Station". Needs clarification.

shall be subject to a ministerial review and approval without the processing of a discretionary permit provided that such modification does not substantially change any of the physical dimensions of such Wireless Tower or Base Station from the dimensions approved as part of the original discretionary permit for the Wireless Tower or Base Station.

However, any modification to a Wireless Tower or Base Station which substantially changes the physical dimensions of either the Wireless Tower or Base Station, and any other modification to a Telecom Facility that does not qualify as a Wireless Tower or Base Station, shall be subject to the permits and authorizations required by this Chapter.

"Substantially Change the Physical Dimensions" means any of the following, and refers to a single change, or a series of changes over time (whether made by the same or different entities) viewed against the City approval(s) for the Wireless Tower or Base Station as existing on February 22, 2012, that individually or cumulatively have any of the effects described below:

a. Changing any physical dimension of the Wireless Tower or Base Station in a manner that creates a violation of any safety code adopted by the City, or by the state or federal government.
b. Changing the physical dimension of a Stealth Facility on a Wireless Tower, where the changes would be inconsistent with the design of the Stealth Facility, or make the Wireless Tower more visible.
c. Changing the physical dimension would require work that would intrude upon the public right-of-way, or any environmentally sensitive area.
d. Increasing or decreasing by five percent (5%) or more any of the following:

CalWA Comment No. 38: Nearly any additional facilities incorporated onto an existing facility could be interpreted to "make the Wireless Tower more visible". This needs to be clarified and relaxed to accomodate collocations without being determined to crossing this "threshold".

CaWA Comment No. 39: This threshold is vague and unclear. Delete or clarify.

CalWA Comment No. 40: This should be increased to 10%.

CalWA Comment No. 41: These additional constraints are confusing and unclear. Delete or clarify. A simple 10% increase in volume is simple enough.

- The height, width, or depth in any direction of any portion of the Wireless Tower or Base Station; or
- The area required for structures required to support the Wireless Tower, including but not limited to guy wires as approved and constructed through the discretionary permit process

Provided that in no event shall the height is increased to exceed the maximum height permitted in the applicable zoning district under the City's regulations.

e. Increasing by more than five percent (5%) any of the height, width, depth or area encompassed within any structure or object enclosing the Wireless Tower, such as a fence or line of shrubs or bushes.
f. Increasing any of an existing Antenna Array's depth, circumference, or horizontal radius from the Wireless Tower in any direction by more than five percent (5%).
g. Adding more than two Antenna Arrays to an existing Wireless Tower, or adding Antenna Arrays that, if the Antenna Array were an existing Antenna Array, would be of such depth, circumference or radius as to fall outside of item f (above), unless such Antenna Arrays were approved pursuant to Government Code Section 65850.6.
h. The mounting of the new or replacement transmission equipment would involve installing new equipment cabinet(s) not permitted under the initial approval and that will not fit within the existing enclosure for the Wireless Tower or Base Station, or would require installation of a new cabinet or enclosure, excluding new equipment and cabinets that will be installed underground. (Note: the proposed installation of a power back-up system [i.e., gas/diesel generator, fuel cell, battery system, etc.] is not Collocation of new transmission equipment.)
i. Any increase in any physical dimension of a Wireless Tower or Base Station or any equipment related thereto or any enclosure thereof at a Legal Nonconforming Facility.

Each application submitted under this section for a modification to an existing Wireless Tower or Base Station shall be accompanied by:

1. A detailed description of the proposed modifications to the existing Telecom Facility(ies);
2. A photograph or description of the Wireless Tower as originally constructed, if available; a current photograph of the existing Wireless Tower and/or Base Station; and, a graphic depiction of the Wireless Tower and/or Base Station after modification showing all relevant dimensions;
3. A detailed description of all construction that will be performed in connection with the proposed modification; and
4. A written statement signed and stamped by a professional engineer, licensed and qualified in California, attesting that the proposed modifications to be performed will not trigger discretionary review under this section.

Any permit issued will be conditioned, and may be revoked, and the Telecom Facility required to be removed or restored to its pre-modification condition if:

a. Any material statement made with respect to the Telecom Facility is false; or
b. The modifications as actually made would have triggered a discretionary review.

20.49.110 – Operational and Radio Frequency Compliance and Emissions Report.

At all times, the operator shall ensure that its Telecom Facilities shall comply with the most current regulatory, operations standards, and radio frequency emissions standards adopted by

CalWA Comment No. 42: CalWA has worked with jurisdictions across the State. It is our experience that when additional testing is required it is so far below allowable limits as set by the FCC that is to be unwarranted. Please delete this requirement as it adds additional burdens and expenses that do not yeild meaningful information.

the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.

Within thirty (30) days after installation of a Telecom Facility, a radio frequency (RF) compliance and emissions report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the Telecom Facility is operating at the approved frequency and complies with FCC standards for radio frequency emissions safety as defined in 47 C.F.R. § 1.1307 *et seq*. Such report shall be based on actual field transmission measurements of the Telecom Facility operating at its maximum effective radiated power level, rather than on estimations or computer projections. If the report shows that the Telecom Facility does not comply with the FCC's 'General Population/Uncontrolled Exposure' standard as defined in 47 C.F.R. § 1.1310 Note 2 to Table 1, the Director shall require that use of the Telecom Facility be suspended until a new report has been submitted confirming such compliance.

Upon any proposed increase of at least ten percent (10%) in the effective radiated power or any proposed change in frequency use of the Telecom Facility by the Telecom Operator, the Telecom Operator shall be required to provide an updated certified radio frequency (RF) compliance and RF emissions safety report.

A qualified independent radio frequency engineer, selected and under contract to the City, may be retained to review said certifications for compliance with FCC regulations. All costs associated with the City's review of these certifications shall be the responsibility of the permittee, which shall promptly reimburse City for the cost of the review.

20.49.120 – Right to Review or Revoke Permit.

The reservation of right to review any permit for a Telecom Facility granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

20.49.130 – Removal of Telecom Facilities.

A. Discontinued Use. Any Telecom Operator who intends to abandon or discontinue use of a Telecom Facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The Telecom Operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by the Community Development Director, within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility;
2. Transfer the rights to use the Telecom Facility to another Telecom Operator and the Telecom Operator immediately commences use within a reasonable period of time as determined by the Community Development Director;
3. Remove the Telecom Facility and restore the site.

B. Abandonment. Any Telecom Facility that is not operated for transmission and/or reception for a continuous period of ninety (90) days or whose Telecom Operator did not remove the Telecom Facility in accordance with Subsection A shall be deemed abandoned. Upon a

finding of abandonment, the City shall provide notice to the Telecom Operator last known to use such Facility and, if applicable, the owner of the affected real property, providing thirty days from the date of the notice within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility;
2. Transfer the rights to use the Telecom Facility to another Telecom Operator who has agreed to reactivate the Telecom Facility within 30 days of the transfer;
3. Remove the Telecom Facility and restore the site.

C. Removal by City.

1. The City may remove an abandoned Telecom Facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.
2. If the City removes the Telecom Facility, the City may, but shall not be required to, store the removed Telecom Facility or any part thereof. The owner of the premises upon which the abandoned Telecom Facility was located and all prior operators of the Telecom Facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the telecom permit as reimbursement for such costs. Also, in lieu of storing the removed Telecom Facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

D. City Lien on Property. Until the cost of removal, repair, restoration and storage is paid in full, a lien shall be placed on the abandoned personal property and any real property on which the Telecom Facility was located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder, with the costs of filing, processing, and release of such City Lien being added to the other costs listed in this Section D.

CROWN CASTLE

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August 28, 2012

VIA U.S. MAIL AND E-MAIL

Janet Johnson Brown, Associate Planner
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663

Re: City of Newport Beach Wireless Telecommunications Facilities Ordinance (City of Newport Beach Municipal Code, § 20.49.010, et seq.)

Dear Ms. Brown:

Crown Castle hereby submits its comments on the proposed amendments to the City of Newport Beach ("City") Wireless Telecommunications Facilities Ordinance (Newport Beach Municipal Code ("NBMC"), § 20.49.010, et seq.) ("Wireless Ordinance").

Crown Castle requests that the City reject the proposed Wireless Ordinance in its current form, and work with industry representatives to craft a revised ordinance consistent with state and federal law.

1. Introduction.

The California Public Utility Commission has issued to Crown Castle a "certificate of public convenience and necessity which identifies the company as a telephone corporation under California law and more specifically as a "competitive local exchange carrier" ("CLEC") and a "public utility." Telephone corporations have a special status under state law (see, e.g., Pub. Util. Code § 216.) and are authorized to "erect poles, posts, piers, or abutments" in the public right of way ("ROW") subject only to local municipal control over the "time, place and manner" of access to the ROW. (*Id.* at §§ 1001, 7901; 7901.1; see *Williams Communication v. City of Riverside* (2003) 114 Cal.App. 4th 642, 648 [upon obtaining a CPCN, a telephone corporation has "the right to use the public highways to install [its] facilities."].)

Crown Castle develops wireless telecommunications infrastructure in the ROW. Its systems, known as "distributed antenna systems," or "DAS," consist of several small-scale antenna "nodes" connected by optic fiber to a central hub. Each node receives optic signal from the hub and converts that signal into radio frequency (RF) signals for use by users in the area. Among other things, DAS is employed for wireless broadband. Wireless broadband is proving transformative on a global scale. As smartphones and tablets proliferate, , data demand is leading to a critical deficit in wireless spectrum, requiring more wireless antennas and infrastructure. According to a 2011 report, wireless data traffic was 110 percent higher in 2011

than in the last half of 2010. Similarly, AT&T reports that its wireless data volumes have increased 30-fold since the introduction of the iPhone.[1] Adding to the mix, 25 percent of all American homes are now wireless only,[2] and wireless data traffic is expected to grow by a factor of 20 between 2010 and 2015.[3] DAS can provide the critical network capacity to address such demand into the 21st Century.

Crown Castle's representatives were in attendance at the July 19, 2012, Planning Commission hearing, and more recently at the July 25, 2012, Stakeholder Meeting, where the Wireless Ordinance was discussed. This letter summarizes Crown Castle's comments concerning the Wireless Ordinance.

2. Applicable Legal Principles.

A. State Law.

State law, including Public Utilities Code section 7901 ("Section 7910"), governs the permitting of wireless telecommunications facilities in the ROW. Under Section 7901 Crown Castle qualifies as a "telephone corporation" with a "vested right" to occupy the ROW throughout the state. That vested right supersedes local franchise requirements and is guaranteed by both the state and federal constitutions. (*Williams Communications v. City of Riverside*, *supra*, 114 Cal.App.4th at p. 648; see also, *Petaluma v. Pacific Tel. & Tel. Co.* (1955) 44 Cal.2d 284, 288-289 [statewide franchise of Section 7901 is a "vested right"; no local franchise is necessary to enter municipal streets]; *County of L. A. v. Southern Cal. Tel. Co.* (1948) 32 Cal.2d 378, 384 [same principle cited]; *Postal Tel. Cable Co. v. Railroad Com.* (1927) 200 Cal. 463, 472 ["[t]he rights acquired by … the provisions of the section, are vested rights which the constitutions, both state and federal, protect."].)

The rights afforded by Section 7901 are a matter of "statewide concern" that supersede -- and therefore obviate the need for -- a municipal grant of entry to the ROW. (*City of Petaluma v. Pac. Tel. and Tel. Co.*, *supra*, 44 Cal.2d at pp. 287-289; see also *Williams Communication v. City of Riverside*, *supra*, 114 Cal.App.4th at p. 653 ["the construction and maintenance of telephone lines in the streets and other public places within the City is today a matter of state concern and not a municipal affair."].) The Legislature enacted SB621, now codified as Public Utilities Code section 7901.1, in 1994 to regulate construction activities in the ROW.[4] Section 7901.1 (Section 7901.1), provides, in relevant part, "that municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are ***accessed***." (Pub. Util. Code, § 7901.1.) Section 7901.1 goes on to state that "[t]he control, to be reasonable, shall, at a minimum, be applied to all entities in an equivalent manner." (*Ibid.*)

Government Code section 50030 also applies to telephone corporations seeking to install their facilities in the ROW. That section provides that a city may not require payment for entry

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[1] Executive Office of the President Council of Economic Advisors (White House, Feb. 2012) at 2-6.
[2] U.S. Department of Health and Human Services (April 2011).
[3] *Id.*
[4] CAL. PUB. UTIL. CODE § 7901.1 (West Supp. 1997); see Analysis of SB 621, Cal. Sen. Rules Comm., Office of Senate Floor Analyses (S. 1994-95 Reg. Sess.)

into its ROW. Specifically, a city cannot impose an exaction that exceeds the "reasonable costs of providing the service for which the fee is charged." (*Williams Communications v. City of Riverside, supra*, 114 Cal.App.4th at p. 648.)

The above statutes and case law give rise to four principles that should inform the City's deliberations about the siting of Crown Castle's DAS facilities:

(1) Crown Castle has vested right to utilize the City's ROW;

(2) The City's permitting requirements for Crown Castle must be imposed in a non-discriminatory manner and applied equally to **"all entities"** using the public ways of the City (not just applied equally among all telephone corporations;

(3) Crown Castle need not obtain a local "franchise" to enter the City's ROW; and

(4) The City is prohibited from imposing any fee to use the ROW, beyond what is required to address the "reasonable costs of providing the service for which the fee is charged" (i.e., the City cannot assess a general revenue fee for use the ROW).

B. Federal Law.

The City also is governed by the federal Telecommunications Act of 1996, Pub. L. No 104-104, 110 Stat. 56 (codified as amend in scattered sections of U.S.C., Tabs 15, 18, 47) ("Telecom Act"). When enacting the Telecom Act, Congress expressed its intent "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." (110 Stat. at 56.) As one court noted:

> Congress enacted the TCA to promote competition and higher quality in telecommunications services and to encourage the rapid deployment of new telecommunications technologies. Congress intended to promote a national cellular network and to secure lower prices and better service for consumers by opening all telecommunications markets to competition.

(*T-Mobile Central, LLC v. Unified Government of Wyandotte*, 528 F.Supp. 2d 1128, 1146-47 (D. Kan. 2007). One way in which the Telecom Act accomplishes these goals is by reducing impediments imposed by local governments upon the installation of wireless communications facilities, such as antenna facilities. (47 U.S.C. § 332(c)(7)(A).) Section 332(c)(7)(B) provides the limitations on the general authority reserved to state and local governments. Those limitations are set forth as follows:

(1) State and local governments may not unreasonably discriminate among providers of functionally equivalent services (§ 332(c)(7)(B)(i)(I)).

(2) State and local governments may not regulate the placement, construction or modification of wireless service facilities in a manner that prohibits, or has the effect of prohibiting, the provision of personal wireless services (better known as the "effective prohibition clause") (§ 332(c)(7)(B)(i)(II)).

(3) State and local governments must act on requests for authorization to construct or modify wireless service facilities within a reasonable period of time (§ 332(c)(7)(B)(ii)). [5]

(4) Any decision by a state or local government to deny a request for construction or modification of personal wireless service facilities must be in writing and supported by substantial evidence contained in a written record (§ 332(c)(7)(B)(iii)).

(5) Finally, no state or local government or instrumentality thereof may regulate the placement, construction or modification of personal wireless service facilities on the basis of the perceived environmental effects of radio frequency emissions to the extent that such facilities comply with federal communications commission's regulations concerning such emissions (§ 332(c)(7)(B)(iv)).

3. Specific Comments.

In light of the above principles, Crown Castle submits the following comments concerning specific provisions of the Ordinance:

(a) Sections 20.49.020, 20.49.070 - Discretionary Approval: The Ordinance sujects ROW facilities to the same discretionary entitlement process (a CUP, MUP, or LTP) that governs wireless telecommunications facilities on private property under the City's zoning ("Telecom Facilities"). The process purports to grant a right of entry to the ROW in exchange for the satisfaction of conditions of approval. By failing to provide for an exception for CLECs seeking to utilize the City ROW, the Ordinance conflicts with time-honored state law confirming the existence of a vested right to enter and use the ROW without having to obtain a local franchise. (*Williams Communications v. City of Riverside*, *supra*, 114 Cal.App.4th at p. 648; see also *Western Union Telegraph Co. v. Hopkins* (1911) 160 Cal. 106 [observing "that the state in its sovereign capacity has the original right to control all public streets and highways" and that the section 536 franchise "included the right to such exclusive occupation by the company of portions of the streets as is maintained for the purpose of its system, leaving nothing in that behalf to be granted by the municipality."].) Since the Ordinance provides no exemption for CLECs seeking to invoke Section 7901 franchise rights, these sections conflict with state law.

(b) Section 20.49.030 – Definitions: The definitions section defines "public rights-of-way" to mean only the "surface" of any street or public way. By restricting the definition of ROW only to the surface of the street, the Wireless Ordinance precludes extension of the ROW to spaces occupied by poles and other above-ground facilities, thereby conflicting with Section 7901, which extends ROW franchise rights to the ability to construct "poles, posts, piers, or

[5] This provision has been interpreted by the Federal Communications Commission ("FCC") to require local governmental agencies to act on wireless telecommunications siting applications within 150 days, or 90 days for collocation facilities. *See* Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance (Federal Communications Commission, Nov. 18, 2009) WT Docket No. 08-165.

abutments for supporting the insulators, wires, and other necessary fixtures." (Pub. Util. Code, § 7901.)

(c) Section 20.49.040: Available Technology: The Wireless Ordinance provides that Telecom Facilities "shall utilize the most efficient, diminutive and least obtrusive available technology ... ." The mandatory language of the provision could be read to hold all wireless carriers and infrastructure developers to impossible technological standards that are outside the purview of local government to impose. Many design considerations must be taken into account in constructing a wireless network, including the need for coverage, capacity, and the ability to incorporate technological changes and upgrades. Such decisions are the prerogative of telephone corporations governed by the regulations of the California Public Utilities Commission, not the City under the proposed Ordinance.

(d) Section 20.49.050: Location Preferences: DAS facilities generally utilize exiting vertical elements in the ROW, such as utility poles and streetlights. The "location preferences" relegate such facilities to "Class 3" type facilities, thereby rendering them more difficult to approve or subjecting them to greater scrutiny. By imposing more stringent controls over such facilities, the Wireless Ordinance purports to vest greater discretion in the decision-maker to deny access to the ROW, thereby asserting greater control over areas outside the ordinary zoning authority of the local agency. This section is in direct conflict with the statewide franchise rights granted to Crown Castle under § 7901, as discussed above.

(e) Section 20.49.050(B): Prohibited Zones: The Wireless Ordinance imposes an outright ban on all Telecom Facilities located in zoning districts for single-unit or two unit residences, all multi-unit and mixed-use developments consisting of fewer than five units and all open-space zoning districts. The prohibited zones provision contains no exception for the ROW and no exception for technical constraints imposed by RF coverage needs. Such zoning restrictions therefore conflict with Section 7901 and could give rise to a prohibition of service under section 332(c)(7)(B)(i)(II) of the Telecom Act.

(f) Section 20.49.050(C): Installations in the Public Right-of-Way: This section incorporates, *in toto*, Chapter 13.20 of the NBMC, which prohibits new poles in underground districts (see NBMC, § 13.20.030(A)) and thereby forces CLECs, such as Crown Castle, to use existing vertical elements, such as city-owned poles (subjecting them to a $1,500 per-month fee). This section purports to prohibit installation of new poles in the ROW, in direct conflict with Section 7901. Insofar as the provision requires collocation on existing city streetlights, thereby subjecting the applicant to the City's license fee provisions, the section violates Government Code section 50030.

(g) Section 20.49.060: General Development and Design Standards: The Wireless Ordinance places a heavy emphasis on aesthetic criteria. Other public utilities utilizing the ROW are not subject to such stringent approval criteria. This section therefore conflicts with Section 7901.1, which requires that all "entities" in the ROW be treated in an equal manner.

(h) Section 20.49.060(C): Height: This section would impose a 35-foot height limitations on facilities located on existing vertical elements in the ROW. The provision features no technical feasibility exception, nor is there any determination or policy statement concerning how such a limitation is legitimately based on the "time, place and manner" controls allowed to local governmental agencies by Section 7901. Accordingly, the provision conflicts with Section 7901. In addition, this section also fails under application of the "all entities" standard of § 7901.1.

(i) Section 20.49.060(D): Setbacks: The Ordinance also incorporates the standard setback restrictions imposed by the applicable zoning district. Such exclusions may constitute an outright prohibition, in violation of section 332(c)(7)(B)(i)(II), as well as a ban on ROW entry, in violation of Section 7901.

(j) Section 20.49.060(F)(3)(c): Screening Standards: This section requires all ancillary DAS equipment to be located within the pole "without increasing the pole width" or located underground. Such a requirement is onerous and cost-prohibitive, if not impossible, to meet. At a minimum, a technical feasibility exception should be incorporated into this section.

(k) Section 20.49.090: City-Owned Property: As noted above, the proposed amendments incorporate Chapter 13.20 of the NBMC, which prohibits new poles in undergrounding districts (see NBMC, § 13.20.030(A)) and thereby forces CLECs, such as Crown Castle, to use existing vertical elements, such as city-owned poles (subjecting them to a $1,500 a month fee). This section, in combination with Section 20.49.050(C), could result in situations where the applicant is forced onto City-owned vertical elements, requiring the applicant to the pay the City's license fees, in violation of Government Code section 50030.

Crown Castle reserves its rights under federal and state law, including Government Code Section 65009, to challenge the Ordinance on the above grounds or additional grounds not specifically raised.

4. Conclusion.

The proposed amendments to the Wireless Ordinance, as currently drafted, do not take account of telephone corporations' rights under Section 7901. Instead of providing for a more limited form of local review over ROW facilities that would be consistent with the City's limited authority to impose "time, place, and manner" rules governing in an equivalent manner "all entities'" access to the public way, the proposed amendments do the opposite: they impose a second tier of requirements, above those already in place for private property sitings. (See, e.g., NBMC, § 20.49.050(B).) At a minimum, Crown Castle would like to see an exception from the discretionary use permit requirement for "Telecom Facilities" located in the ROW, with appropriate time, place, and manner controls embodied in a ministerial design review process.

Because of the reasons stated in this letter, Crown Castle asks that the City reject this proposed ordinance.

We appreciate the City's consideration of the matters contained in this letter. We will be present at the September 6, 2012, Planning Commission meeting and, in the meantime, are on hand to answer any questions you may have or to work with the City Planning Commission and Staff to address the concerns herein.

Very truly yours,

Dan Schweizer
Government Relations Counsel
Crown Castle NG West Inc.

MWS:mws

3230377.1

ADDITIONAL MATERIALS RECEIVED

Wireless Telecommunications Facilities Ordinance

Code Amendment No. 2012-004

Planning Commission
Study Session
September 6, 2012

STAFF PRESENTATION

Background

- Existing Ordinance Adopted in 2002
- Comprehensive update
  - Update to reflect changes in law
  - Intended to balance needs of community by:
    - Providing for increasing demand for wireless networks
    - Mitigating the impacts of future telecom facilities
- Planning Commission Hearing on 7/19/2012
  - Written comments received from 4 parties

Background

- **Commission requested:**
  - **Study session**
  - **Additional outreach with telecom industry and interested parties**
- **Stakeholder meeting conducted on 7/25/2012**

Comments & Responses

1. Discretionary Permit Process

- **Comment**
  - Provide for administrative approval
  - Limit discretionary process
- **Response/Recommendation**
  - Administrative approval of screened or stealth facilities without public notice
  - Zoning Administrator review for most facilities
  - Planning Commission review for highly visible facilities located near residences

Comments & Responses

2. Legal Nonconforming Facilities

- **Comment**
  - **Will nonconforming facilities be required to change or be eliminated**
- **Response/Recommendation**
  - **Existing, lawfully established facilities may continue**
  - **New or modified facilities must comply**
  - **Revise draft ordinance to enhance clarity**

Comments & Responses

3. Definitions

- **Comment**
  - **Confusing**

- **Response/Recommendation**
  - **Clarify definitions**
    - **Base station, public right-of-way, support equipment, wireless tower, and listed antenna support structures**

Comments & Responses

4. Technology requirements

- **Comment**
  - **"…the most efficient, diminutive and least obtrusive technology…"**

- **Response/Recommendation**
  - **Revise draft ordinance to remove "least efficient" or "diminutive" and stress "least obtrusive"**

Comments & Responses

5. Location Preferences

- **Comment**
  - Proposed classification system is confusing
- **Response/Recommendation**
  - Clarify classification system
  - Eliminate "Collocation" class
  - Provide "Public Right-of-Way" class

Comments & Responses

6. Prohibited Locations

- **Comment**
  - Industry wants access to all zones, including residential
- **Response/Recommendation**
  - Access to multi-family zones improved
  - Access to single- and two-family zone areas provided within the public right-of-way (PROW)
  - No change to draft ordinance recommended

Comments & Responses

7. Installations in the Public Right-of-Way

- **Comment**
  - Draft ordinance too limiting on use of PROW
  - Underground vaults for support equipment infeasible
- **Response/Recommendation**
  - City controls time, place and manner of use of the PROW – proposed process is reasonable
  - Underground vaults feasible, Title 13 does provide for flexibility
  - Revise draft ordinance to eliminate conflicting or duplication

Comments & Responses

8. General Development and Design Standards

- **Comment**
  - Screening is burdensome and is unfair treatment considering no screening of Edison facilities
- **Response/Recommendation**
  - Screening of telecom facilities is supported by applicable law and case law
  - No change to draft ordinance recommended

Comments & Responses

9. Height

- **Comment**
  - Taller facilities requested & Variance process difficult
- **Response/Recommendation**
  - Draft ordinance treats telecom facilities similar to other structures
  - Clarify provisions but no change to proposed height standards

Comments & Responses

10. Setback Standards

- **Comment**
  - Proposed "fall zone" setback equal to 110% height is excessive and unnecessary

- **Response/Recommendation**
  - Staff agrees, eliminate proposed additional setback

Comments & Responses

11. Screening Standards

- **Comment**
  - Restrictive, duplicative and flexibility needed
- **Response/Recommendation**
  - Revise draft ordinance to reflect changes in antenna classes (Collocation & PROW)
  - Revise to allow exceptions when requirements are infeasible

Comments & Responses

12. Permit Review Procedures

- **Comment**
  - Review procedures burdensome
  - Elimination of application submittal requirements
- **Response/Recommendation**
  - Provide administrative approval for Class 1 (screened/stealth)
  - Submittal requirements specified by CD Director within application consistent with Zoning Code

Comments & Responses

13. License Agreements for City-Owned Property

- **Comment**
  - Streamline entitlement process
  - Fee could violate State law
- **Response/Recommendation**
  - Concurrent processing should be allowed
  - Established fee is within City's right to regulate time, place and manner of use of PROW

Comments & Responses

14. Modification of existing facilities

- **Comment**
  - Draft complicated
  - 10% should be threshold for administrative approval
- **Response/Recommendation**
  - Simplify draft
  - 5% threshold based upon community sensitivity to height & desire to protect views

Comments & Responses

15. Radio Frequency (RF) Emissions Reporting

- **Comment**
  - **FCC oversight sufficient, ordinance requirement is burdensome**
- **Response/Recommendation**
  - **Verification cannot be burdensome**
  - **No change to requirement**

Summary

- Provide administrative approval for Class 1 facilities (screened/stealth)
- Eliminate "co-location" antenna class
- Create "public right-of-way" antenna class
- Reduce/eliminate complicating definitions

Summary

- Limit Planning Commission review to most visually obtrusive proposals
- Eliminate "Fall Zone" setback proposal
- Revise draft to simplify and clarify

Next Steps

- Staff to revise ordinance
- Provide revised draft in advance of meetings or hearings
- Additional stakeholder meeting
- Return to Planning Commission – date TBD

For more information contact:

James Campbell, Principal Planner
949-644-3210
jcampbell@newportbeachca.gov
www.newportbeachca.gov

Comments for September 6, 2012 Planning Commission Study Session regarding Wireless Ordinance

The following comments are on the staff regarding the Wireless Telecommunications Facilities Ordinance (PA2012-057) / Code Amendment No. 2012-004 as presented to the Newport Beach Planning Commission as Agenda Item 1 at its September 6, 2012 meeting.

The comments were prepared by Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229) , and are a mix of what may seem major and minor points.

Additional Background Information

In addition to my previous comments reproduced on pages 38-48 of the staff report, I would like the Planning Commission to be aware of the following e-mail message sent, at her request, to Janet Johnson Brown (and copied to Jim Campbell) on August 3, following the July 25, 2012 "stakeholders" meeting described near the bottom of page 1 of the staff report:

> Janet (& Jim),
>
> Sorry to be so slow in getting this to you, but to follow up on our brief conversation after the July 25 wireless "stakeholders" meeting, with reference to the new Wireless Communication Facilities regulations in the City of Oceanside Local Coastal Program considered by the California Coastal Commission as Item 8a at their July 11, 2012 meeting (see complete text in the CCC staff report: W8a-7-2012.pdf, pages 23-42):
>
> http://documents.coastal.ca.gov/reports/2012/7/W8a-7-2012.pdf
>
> the features I saw that seemed particularly innovative and useful to CNB included:
>
> 1. Approval of telecom permit requires findings of a verifiable deficiency in existing coverage and that the means proposed to correct the deficiency are the least intrusive possible (Section 3907.A). This by now time-honored standard is, I think, no longer as clearly articulated in our own proposed code. Note also that although the regulation of applications to use the Oceanside public rights-of-way of way are rather vague (Section 3910.A), each encroachment permit ultimately requires the same findings to be made by the City Council (Section 3910.B).
>
> 2. To accommodate changing technology, Oceanside approvals are limited to 10 years with a possibility of three 2-year administrative extensions (maximum of 16 years total) after which re-application is required (Section 3915.B).
>
> 3. As with the CNB proposal, upon adoption of the new code, existing facilities that would not comply with the new standards become legally non-conforming, but in Oceanside they are NOT allowed to continue indefinitely simply by staying in compliance with the original code. Anything other than routine maintenance of existing operational equipment triggers a re-evaluation of the facility under the new code (Section 3916). A fairly complete re-evaluation can also be triggered, at the

planner's discretion, even when sites built under the new code are modified (Section 3917).

4. The Application Submittal Requirements in Section 3906 also seem pretty thorough. As best I can tell the similar detailed submittal requirements in our current CNB telecom code were inadvertently omitted from the proposal submitted to the Planning Commission.

5. Finally, Oceanside did not seem to feel any need to single out DAS facilities for special treatment (Section 3919).

I will try to submit more detailed comments on the current CNB proposal next week.

Yours,

Jim Mosher

Although other commitments prevented me from submitting the promised more detailed follow-up, I continue to feel these comments remain relevant and that the Oceanside ideas could be usefully incorporated into our proposed ordinance.

Subsequent to this, Costa Mesa introduced at its August 21, 2012 meeting (agenda item PH-2) an ordinance regarding Wireless Facilities in the Public Right-of-Way, which was adopted just two days ago, and also contains interesting provisions.

Comments on the Staff Report

As a Newport Beach citizen I am pleased to see that City staff has not caved in to most of the demands presented by the industry representatives. I feel, however, that the proposed ordinance still needs considerable more work.

Because of the extreme lateness of this submission I will just comment briefly on a few of the specific recommendations listed on pages 2-6 of the staff report:

Item 1 (Discretionary Permit Process): Without an extremely precise definition of what falls in "Class 1," I think the suggestion to allow them to be "*administratively approved without providing notice to the public*" is a very poor one. Even if the decision is "administrative" the absence of public notice means the public has no practical ability to appeal if they have reason to believe the administrative decision was incorrect. In my experience the Zoning Administrator is not overburdened, and considers considerably more minor matters. Nor is it an onerous burden on the applicant. In fact, a Zoning Administrator hearing took place simultaneously with the Telecom Stakeholders meeting on July 25th and two matters were disposed of in a total of 5 minutes.

Item 2. (Legal Nonconforming facilities): I find the recommendation hard to follow, but I think changing technology means that all wireless permits *should* be subject to sunsetting provisions (as in the Oceanside and Costa Mesa codes referenced above), when legally non-conforming facilities are upgraded they *should* be required to come into conformance with the current codes, not the local regulations in effect at the time of their initial approval (as I believe the proposed code reads).

Item 6. (Location Preferences, Prohibited Locations): I may be missing something, but I don't see the "*Planning Commission review at public hearings for exceptions to location standards*" that the report suggests is in the proposed code.

Item 12. (Permit Review Procedures): Again, I do not think *any* telecom applications should be exempted from public notice.

Item 13. (License Agreements for City-Owned Property): I feel it is very important that the public have a voice in the use of public property. Although somewhat outside the scope of the Study Session, City Charter Section 421 currently ensures that by restricting the authority to bind the City to contracts to the City Council – which in turn can act only at a publicly noticed meeting. A proposed "update" to the Charter on this November's ballot would overturn that longstanding protection by giving the Council the power to allow City staff to decide what public property it is appropriate to lease out for private commercial use, presumably without any public notice or input. I view that as a very bad change.

Additional Comment

I am very disappointed that staff has not seen fit to retain the restrictions and discretion found in our existing Wireless Code regarding the siting of telecom facilities that impact private views, or otherwise detrimentally impact private property (please see page 3 of my earlier comments as reproduced on page 40 of the 79 page Study Session staff report). I hope the Commission will ask for those provisions to be kept.